



State Water Resources Control Board



Division of Water Rights

1001 I Street • Sacramento, California 95814 • (916) 341-5057
Mailing Address: P.O. Box 100 • Sacramento, California 95812-0100
FAX (916) 341-5048 • <http://www.waterboards.ca.gov>

Linda S. Adams
Acting Secretary for
Environmental Protection

Edmund G. Brown Jr.
Governor

FEB 04 2011

In Reply Refer To:
JDM:S008209, S014981 and
S014759 et al

Pine Gulch Creek Watershed Enhancement Project
c/o Barry H. Epstein
Fitzgerald Abbott & Beardsley, LLP
1221 Broadway, 21st Floor
Oakland, CA 94612

Dear Mr. Epstein:

ORDER APPROVING THE PETITION FOR CHANGE IN CONDITIONS OF INSTREAM FLOW DEDICATION FOR STATEMENTS OF WATER DIVERSION AND USE 8209, 14981, 14759, 14760, AND 14764 AND DENYING THE REQUEST TO RESCIND CORRECTION ORDER

The orders approving the petitions for change in the conditions of the instream flow dedication associated with Statements of Water Diversion and Use 8209, 14981, 14759, 14760 and 14764 are enclosed. The orders amend condition 1 of the January 20, 2010 correction order issued for Statements 8209, 14981, 14759, 14760, and 14764 and deny the request to rescind the correction order. Please read the conditions of the orders carefully so that you are familiar with your responsibilities.

The State Water Resources Control Board requires that water diverters submit triennial Supplemental Statements of Water Diversion and Use (Supplemental Statements) documenting the amount of water that has been diverted pursuant to their riparian claim. Please note that in the triennial Supplemental Statements the water diverter will be required to provide a daily record of the quantity dedicated to the environment, pursuant to the instream flow dedication. Beginning in 2011, water diverters will be required to file Supplemental Statements online using the Report Management System. The State Water Resources Control Board will provide you with instructions for filing online reports in early 2011.

The orders approving the petitions for change may be viewed at:
http://www.waterboards.ca.gov/water_issues/programs/ewrims/statements/. If you require further assistance, please contact Jennifer Dick-McFadden at (916) 322-8568, or by email at jdick-mcfadden@waterboards.ca.gov.

Sincerely,

ORIGINAL SIGNED BY:

Phillip Crader, Acting Manager
Permitting and Licensing Section

Enclosures (4)

California Environmental Protection Agency

SURNAME

J DICK
1-31-11

Crader
11/31/11
Recycled Paper

W 2/3/11

Barry H. Epstein

- 2 -

cc: (without enclosures)
Star Route Farms North Parcel
Star Route Farms South Parcel
c/o Warren and Amy Weber
95 Olema-Bolinas Road
Bolinas, CA 94924

New Land Fund
c/o Dennis Dierks
PO Box 382
Bolinas, CA 94924

Fresh Run Farm
c/o Peter Martinelli
PO Box 478
Bolinas, CA 94924

ANT: DCC: 01/27/11

U:\PERDRV\NguyenTan\Pine Gulch Enhancement\8-9-10 Petitions Orders\Cover letter.doc

STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
STATE WATER RESOURCES CONTROL BOARD

DIVISION OF WATER RIGHTS

In the Matter of Riparian Diversion Statements 14759, 14760, and 14764
Fresh Run Farm

**ORDER APPROVING CHANGE IN CONDITION OF INSTREAM FLOW
DEDICATION AND DENYING REQUEST TO RESCIND
CORRECTION ORDER**

SOURCE: Pine Gulch Creek tributary to Bolinas Lagoon thence Pacific Ocean
COUNTY: Marin

WHEREAS:

1. On July 31, 2009, the State Water Resources Control Board (State Water Board), Division of Water Rights (Division) approved the petition for change in purpose and place of use, pursuant to Water Code Section 1707, for riparian diversion claimed under Statements of Water Diversion and Use 14759, 14760, and 14764 filed by Fresh Run Farm (Petitioner). Pursuant to the instream flow dedication order, water that would otherwise have been diverted from Pine Gulch Creek for irrigation during the period of July 1 to December 15 shall remain instream and be dedicated to fishery and habitat enhancement between the Petitioner's point of diversion and Bolinas Lagoon. To substitute the water dedicated to Pine Gulch Creek, the Petitioner filed Application 31752 on March 19, 2009 to appropriate winter flows by permit. Permit 21249 was issued July 31, 2009.
2. The Petitioner's Agent notified the Division by email on December 17, 2009 that the July 31, 2009 order did not provide a temporal connection between the instream flow dedication and appropriative storage rights. Section 8 (b) of Application 31752 indicates that construction of the project was to start in 2009 and the year of first water use was to occur in 2010. A correction order was issued January 20, 2010 implementing the timeline identified in the application, pursuant to Water Code section 1124.
3. The Petitioner's Agent notified the Division by email dated January 25, 2010 that the original time frame, identified in Application 31752, is no longer valid due to lack of project funding and delay in submittal of permit applications to the Army Corps of Engineers and the Department of Fish and Game.
4. A petition for change was filed on August 9, 2010 requesting an amendment to recognize that the commencement of the proposed instream flow dedication be conditioned upon reservoir construction. The petition for change also included a request to rescind the January 20, 2010 correction order.
5. California Code of Regulations Section 768 states that any person interested in the permit affected by the order may petition the State Water Board for reconsideration of the matter no

later than 30 days after adoption by the State Water Board. The request to rescind the January 20, 2010 correction order occurred beyond the specified time frame.

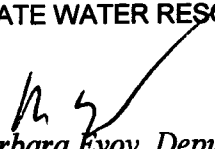
6. Pursuant to California Code of Regulations Section 795, the State Water Board's notice requirements shall be based on the potential effects of the proposed change on legal users of water and on fish, wildlife, and other instream beneficial uses of water. The August 9, 2010 petition for change requests amendment of the time schedule for completion of the project that benefits instream beneficial uses. Consequently, a public notice was not issued. The Department of Fish and Game was notified of the petition for change by letter dated September 16, 2010 pursuant to Water Code Section 1703.
7. Marin County, as the Lead Agency, prepared an Initial Study (IS) for this project pursuant to the California Environmental Quality Act (CEQA) (California Code of Regulations (CCR), tit. 14, § 5063.) The IS described the dedication to instream flows under Water Code Section 1707 as being linked directly with the appropriative storage rights associated with the proposed reservoirs. The IS concluded that project implementation would result in significant, long-term protection and management of aquatic habitat on private lands within the Pine Gulch Creek watershed. The petition for change submitted August 9, 2010 does not request any change to the proposed project as evaluated pursuant to CEQA. Incorporation of language updating the temporal connection identified in condition 1 of the correction order would not result in significant adverse impacts to the environment.
8. The State Water Board finds that, with the conditions included in this order, the change will neither increase the amount of water that the Petitioner is entitled to use or unreasonably affect any legal user of water. The State Water Board further finds that the change is in the public interest and the change will not adversely affect fish, wildlife, instream beneficial uses, or public trust resources.

NOW, THEREFORE, IT IS ORDERED THAT

1. Condition 1 of the correction order approving the instream flow dedication be amended to include the following language:

Upon completion of reservoir construction and commencement of project operations pursuant to Permit 21249, Petitioner shall dedicate to instream flows, from the period of July 1 to December 15 of each year, all riparian water previously diverted for the purpose of irrigation under Statements of Water Diversion and Use 14759, 14760, and 14764. During this period, riparian water may be diverted for domestic and industrial purposes only.
2. All other conditions specified in the Division's correction order dated January 20, 2010 are not affected by this order.
3. The request to rescind the January 20, 2010 correction order is denied.

STATE WATER RESOURCES CONTROL BOARD


Barbara Evoy, Deputy Director
Division of Water Rights

Dated: **FEB 04 2011**

STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
STATE WATER RESOURCES CONTROL BOARD

DIVISION OF WATER RIGHTS

In the Matter of Riparian Diversion Statements 14759, 14760, and 14764
Fresh Run Farm

**ORDER APPROVING CHANGE IN CONDITION OF INSTREAM FLOW
DEDICATION AND DENYING REQUEST TO RESCIND
CORRECTION ORDER**

SOURCE: Pine Gulch Creek tributary to Bolinas Lagoon thence Pacific Ocean
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WHEREAS:

1. On July 31, 2009, the State Water Resources Control Board (State Water Board), Division of Water Rights (Division) approved the petition for change in purpose and place of use, pursuant to Water Code Section 1707, for riparian diversion claimed under Statements of Water Diversion and Use 14759, 14760, and 14764 filed by Fresh Run Farm (Petitioner). Pursuant to the instream flow dedication order, water that would otherwise have been diverted from Pine Gulch Creek for irrigation during the period of July 1 to December 15 shall remain instream and be dedicated to fishery and habitat enhancement between the Petitioner's point of diversion and Bolinas Lagoon. To substitute the water dedicated to Pine Gulch Creek, the Petitioner filed Application 31752 on March 19, 2009 to appropriate winter flows by permit. Permit 21249 was issued July 31, 2009.
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4. A petition for change was filed on August 9, 2010 requesting an amendment to recognize that the commencement of the proposed instream flow dedication be conditioned upon reservoir construction. The petition for change also included a request to rescind the January 20, 2010 correction order.
5. California Code of Regulations Section 768 states that any person interested in the permit affected by the order may petition the State Water Board for reconsideration of the matter no

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per order 123010*

Kassel 11/7/11

Gray 2/3/11

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8. The State Water Board finds that, with the conditions included in this order, the change will neither increase the amount of water that the Petitioner is entitled to use or unreasonably affect any legal user of water. The State Water Board further finds that the change is in the public interest and the change will not adversely affect fish, wildlife, instream beneficial uses, or public trust resources.

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2. All other conditions specified in the Division's correction order dated January 20, 2010 are not affected by this order.
3. The request to rescind the January 20, 2010 correction order is denied.

STATE WATER RESOURCES CONTROL BOARD

ORIGINAL SIGNED BY:

*Barbara Evoy, Deputy Director
Division of Water Rights*

FEB 04 2011

Dated:

ANT: DCC: 12/29/10

U:\PERDRV\NguyenTan\Pine Gulch Enhancement\8-9-10 Petitions Orders\SO14759 et al

Jennifer Dick-McFadden - RE: Pine Gulch Orders

From: Jennifer Dick-McFadden
To: Epstein, Barry H.
Date: 12/29/2010 8:52 AM
Subject: RE: Pine Gulch Orders

Barry,

I have included responses to your questions below. Please let me know if you need any additional clarification. Thanks.

1. Your understanding of the language that would be in effect is correct.
2. The language in condition 1 is referring to the same point in time (commencement of diversion into the pond).

Jennifer Dick-McFadden
Environmental Scientist
State Water Resources Control Board
Division of Water Rights
916-322-8568
jdick-mcfadden@waterboards.ca.gov

>>> On 12/15/2010 at 12:07 AM, in message <89BC2EE2D4CFFE4B873E7E68A86E115B06F2DA30@fab-ex.fab.com>, "Barry H. Epstein" <bepstein@fablaw.com> wrote:
Jennifer-

I have reviewed the draft "Order Approving Change in Condition of Instream Flow Dedication and Denying Request to Rescind Correction Order" transmitted per your email below. I understand that the attached draft was prepared for one of the three farmers' rights, but the same text would be used to correct each of the 1707 Orders.

The original Orders were issued July 31, 2009. The SWRCB then issued Correction Orders in January 2010. The attached draft Order is the third in the series. To help see the progression of the changes, I have prepared a copy of the text of the original Order, showing the text that was deleted by the Correction Order (in ~~strikeout~~), and then showing the text of the Correction Order that would be deleted by this draft Order, if finalized (also in ~~strikeout~~), with the proposed replacement language inserted. In all cases, the substantive language being changed is in paragraph 1 of the Order (on page 2).

I want to make sure that the progression of the text shown on the attached as my understanding is correct as to what language actually would be in effect upon adoption of this draft Order Approving Change. Please confirm or correct my understanding in this regard.

Also I would ask you to clarify the meaning of the term "commencement of project operations" as used in the draft Order, since I do not recall that being a term that is defined in the Water Code or SWRCB regulations. The Petition had proposed the use of the term "...water is first diverted to storage pursuant to Permit No. ..." The farmers would appreciate some additional clarity if the "commencement of project operations" is intended to point to a different point in time or is just a different means of referring to the same point in time (i.e., commencement of diversion into the pond under the appropriative right).

Note also that, at a minimum, each permit would have to be viewed as its own "project" in order for this language to be appropriate. One farmer's commencement of exercise of his appropriative right should not affect the date for cessation of riparian pumping unrelated to that specific right. For example, if Star Route farms were to complete its pond construction first and so be able to commence exercise of its appropriative rights, the other two farmers' ponds may not yet be ready and so their riparian diversions will not cease at the same time.

Thank you for forwarding the Order as a draft. This has provided the further opportunity to seek these clarifications before final action is taken.

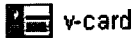
Best regards,

-Barry.

Barry H. Epstein
Fitzgerald Abbott & Beardsley LLP
1221 Broadway, 21st Floor
Oakland, CA 94612
tel 510.451.3300
fax 510.451.1527

bepstein@fablaw.com

www.fablaw.com



FITZGERALD ABBOTT & BEARDSLEY LLP
ATTORNEYS AT LAW

Important: This electronic mail message, including any attached files, is being sent by or on behalf of a lawyer; it is confidential and it may contain or constitute information protected by the attorney-client and/or the attorney work-product privileges. If the person actually receiving this message, or any other reader of this message, is not the named recipient, or the employee or agent responsible to deliver it to the named recipient, you are not authorized to retain, read, copy or disseminate this communication or any part of it. If you have received this communication in error, please immediately notify Fitzgerald Abbott & Beardsley LLP at (510) 451-3300. Thank you.

-----Original Message-----

From: Jennifer Dick-McFadden [mailto:JDick-McFadden@waterboards.ca.gov]

Sent: Monday, December 06, 2010 10:07 AM

To: Barry H. Epstein

Subject: Pine Gulch Orders

Barry,

I have attached the draft Order for the Pine Gulch project. As all the orders will essentially be the same I have only attached a copy of the draft order for S008209. Please let me know if you have any questions or comments by Monday, December 20, 2010. If I do not hear from you by then I will assume that you have no comments or concerns with the draft Order. Thank you.

Jennifer Dick-McFadden

Environmental Scientist
State Water Resources Control Board
Division of Water Rights
916-322-8568
jdick-mcfadden@waterboards.ca.gov

Jennifer Dick-McFadden - Pine Gulch Orders

From: Jennifer Dick-McFadden
To: Epstein, Barry H.
Date: 12/6/2010 10:07 AM
Subject: Pine Gulch Orders
Attachments: S008209 _A031750_.pdf

Barry,

I have attached the draft Order for the Pine Gulch project. As all the orders will essentially be the same I have only attached a copy of the draft order for S008209. Please let me know if you have any questions or comments by Monday, December 20, 2010. If I do not hear from you by then I will assume that you have no comments or concerns with the draft Order. Thank you.

Jennifer Dick-McFadden
Environmental Scientist
State Water Resources Control Board
Division of Water Rights
916-322-8568
jdick-mcfadden@waterboards.ca.gov



FITZGERALD ABBOTT & BEARDSLEY LLP
ATTORNEYS AT LAW

1221 Broadway, 21st Floor Oakland, CA 94612
reply to: P.O. Box 12867 Oakland, CA 94604-2867

STATE WATER RESOURCES
CONTROL BOARD

10 SEP 21 AM 10:26

DIV. OF WATER RIGHTS
SACRAMENTO

voice: 510.451.3300
fax: 510.451.1527
www.fablaw.com

Barry H. Epstein
bepstein@fablaw.com

September 16, 2010

Department of Fish and Game
Bay Delta Region
c/o Corinne Gray
P.O. Box 47
Yountville, CA 94558

Department of Fish and Game
c/o Carl Wilcox, Acting Water Branch Chief
830 S Street
Sacramento, CA 95811

Department of Fish and Game
c/o Nancy Murray, Sr. Staff Counsel
1416 9th Street, 12th Fl.
Sacramento, CA 95814

Re: Pine Gulch Creek Enhancement Project
Petitions for Change & Environmental Information Forms

Dear Ms. Gray, Ms. Murray and Mr. Wilcox:

Pursuant to Water Code § 1703, enclosed please find copies of Petitions to Change relating to the Pine Gulch Creek Enhancement Project. These Petitions seek only a minor correction to remove an inconsistency in the SWRCB's originally issued Orders under Water Code 1707 approving dedication of historic riparian diversions for summer irrigation.

For your information, the following is a brief description of the overall Project, lifted from a prior document:

This Project is a cooperative effort among three organic farmers, the State Coastal Conservancy, the Marin County Resource Conservation District, the California Department of Fish & Game, NOAA-Fisheries, and the National Park Service/Point Reyes National Seashore. Two nonprofit groups, Trout Unlimited and Sustainable Conservation, also have lent support to the Project.

The farmers operate three organic farms along Pine Gulch Creek in West Marin. Pine Gulch Creek begins and largely runs through Point Reyes National Seashore lands, then passes through the three farms before entering Bolinas Lagoon. Pine Gulch Creek is a steelhead trout and Coho salmon-bearing stream within a limited watershed. Concern that low summer flows could become a limiting factor for salmonid populations was the impetus for the origination of the project 8 years ago.

Currently, the three farmers are exercising their riparian rights to withdraw water from Pine Gulch Creek, including substantial diversions during the summer growing season to meet their irrigation needs. The purpose of the Project is to enhance summer instream flows in Pine Gulch Creek, while securing a continued adequate supply of water for the farmers' use, by substituting winter appropriative diversions for summer riparian irrigation diversions. (A small amount of domestic riparian diversions will continue and are not affected by the Project.)

Under the Project, five off-stream storage ponds will be constructed on the farms and filled with winter sheet flow and diversions from Pine Gulch Creek and unnamed tributaries to the Creek. Development of the off-stream storage will allow the Farmers to forego *any* diversions from the Creek for irrigation during the summer season (July 1 to December 15).....

The farmers will dedicate all of their riparian irrigation diversions between July 1 and December 15 to in-stream flow for the benefit of Coho salmon and steelhead trout under California Water Code §1707. This dedication will be linked directly to the appropriative storage rights associated with the proposed ponds.

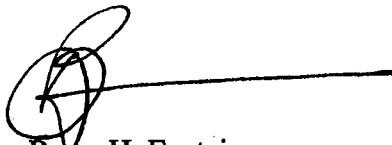
The specific changes requested in the current Petitions for Change are explained in the attachment to each of the Petitions.

Please feel free to call me if you have any questions concerning these Petitions. Thank you.

Very truly yours,

FITZGERALD ABBOTT & BEARDSLEY LLP

By



Barry H. Epstein

C: Jennifer Dick-McFadden, SWRCB (w/o enls.)



FITZGERALD ABBOTT & BEARDSLEY LLP
ATTORNEYS AT LAW

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fax: 510.451.1527
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Barry H. Epstein
bepstein@fablaw.com

August 20, 2010

Jennifer Dick-McFadden
Division of Water Rights
State Water Resources Control Board
1001 I Street
Sacramento, California

STATE WATER RESOURCES
CONTROL BOARD
10 AUG 24 PM 1:48
DIV. OF WATER RIGHTS
SACRAMENTO

Re: Pine Gulch Creek Enhancement Project –
Environmental Information Forms For Petitions for Change


Dear Jennifer:

Per your August 18, 2010 request, enclosed are completed Environmental Information for
Petitions forms for each of the four Petitions for Change filed on or about August 9, 2010.

Please let me know if you need anything further or have any questions about the Petitions.

Very truly yours,

FITZGERALD ABBOTT & BEARDSLEY LLP

By 
Barry H. Epstein

C: Nancy Scolari, Marin RCD
Michael Bowen, State Coastal Conservancy
Tina Leahy, Assembly WP&W Committee
Warren Weber, Star Route Farms
Dennis Dierks, New Land Fund
Peter Martinelli, Fresh Run Farm

Environmental
Forms filed w/
Petition
JDM



FITZGERALD ABBOTT & BEARDSLEY LLP
ATTORNEYS AT LAW

1221 Broadway, 21st Floor Oakland, CA 94612
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voice: 510.451.3300
fax: 510.451.1527
www.fablaws.com

Barry H. Epstein
bepstein@fablaw.com

August 6, 2010

VIA OVERNIGHT COURIER

Records Unit
Division of Water Rights
State Water Resources Control Board
1001 I Street, 2nd Floor
Sacramento, California

STATE WATER RESOURCES
CONTROL BOARD
DIV. OF WATER RIGHTS
SACRAMENTO
10 AUG -9 AM 11:27

Re: Pine Gulch Creek Enhancement Project -- Petitions for Change

Dear Sir/Madam:

Enclosed are an original and one (1) copy of four (4) Petitions for Change with respect to the SWRCB's four (4) Orders Approving Instream Flow Dedication, dated July 31, 2009 (as amended by the four (4) Orders Correcting Instream Flow Dedication, dated January 20, 2010), with respect to the following:

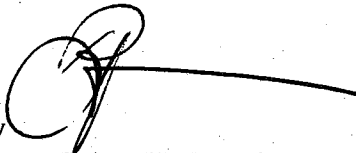
1. Star Route Farms -- South Parcel (SWDU 8209)
2. Star Route Farms -- North Parcel (SWDU 8209)
3. Fresh Run Farm (SWDU 14759, 14760 and 14764)
4. Paradise Valley Farm (SWDU 14981)

Also enclosed are checks for the filing fees -- \$850 for each Petition and \$850 Fish & Game fee covering the Petitions.

Please let me know if you have any questions concerning this filing.

Very truly yours,

FITZGERALD ABBOTT & BEARDSLEY LLP

By 
Barry H. Epstein

C: Vicky Whitney, Jim Kassel, and Jennifer Dick-McFadden (via email)
Nancy Scolari, Marin RCD (via email)
Michael Bowen, State Coastal Conservancy (via email)
Tina Leahy, Assembly WP&W Committee (via email)

checks rec'd
\$1,700.00
\$850.00 x2
\$1,700.00 CDF
8/10/10
AMC

PETITION FOR CHANGE
(WATER CODE 1700)

____ Point of Diversion, ____ Point of Rediversion, ____ Place of Use, ____ Purpose of Use
Application ____ Permit ____ License ____ Statement or Other ____ See attached
3014759, 3014760, 3014761 (3014762)

I (we) hereby petition for change(s) noted above and shown on the accompanying map and described as follows:

Point of Diversion or Rediversion (Give coordinate distances from section corner or other ties as allowed by CCR, tit. 23, section 715, and the 40-acre subdivision in which the present and proposed points of diversion lie.)

Present ____ No change ____

Proposed ____

Place of Use (If irrigation, then state number of acres to be irrigated within each 40-acre tract.)

Present ____ No change ____

Proposed ____

Purpose of Use

Present ____ No change ____

Proposed ____

Does the proposed use serve to preserve or enhance wetlands habitat, fish and wildlife resources, or recreation in or on the water (See Water Code section 1707)? ____

(yes/no)

• GIVE REASON FOR PROPOSED CHANGE: See attached

• WILL THE OLD POINT OF DIVERSION OR PLACE OF USE BE ABANDONED? n/a

(yes/no)

• WATER WILL BE USED FOR

No change

PURPOSES.

I (we) have access to the proposed point of diversion or control the proposed place of use by virtue of? n/a

(ownership, lease verbal or written agreement)

Are there any persons taking water from the stream between the old point of return flow and the new point of return flow? n/a

(yes/no)

If by lease or agreement, state the name and address of party(s) from whom access has been obtained.

n/a

Give name and address of any person(s) taking water from the stream between the present point of diversion or rediversion and the proposed point of diversion or rediversion, as well as any other person(s) known to you who may be affected by the proposed change.

n/a

THIS CHANGE DOES NOT INVOLVE AN INCREASE IN THE AMOUNT OF THE APPROPRIATION OR SEASON OF USE.

I (we) declare under penalty of perjury that the above is true and correct to the best of my (our) knowledge and belief.

Dated August 4th, 2010 at Bolinas, California

Pet. J. Monte
Signature(s)

415-868-2313
Telephone No.

NOTE: All petitions must be accompanied by the fee (see fee schedule at _____), made payable to the State Water Resources Control Board (State Water Board) and an \$850 fee made payable to the Department of Fish and Game must accompany the petition. Separate petitions are required for each water right. Separate State Water Board fees are required if both a change and time extension petition are being filed.

check rec'd
\$850.00 (DFG)
check rec'd
\$850.00
8/10/10
AMG

412-888-5212

Jeff. Moore
4-7-74

Attachment to Petition for Change
Fresh Run Farm

1. On March 19, 2009, Petitioner filed Application to Appropriate Water 31752 ("Application") and Petition for Change under Water Code § 1707 ("Petition"). As explained in the Petition:

This Petition under Water Code Section 1707 accompanies an Application to Appropriate Water by the same Petitioner/Applicant and is part of the Pine Gulch Creek Enhancement Project. Pursuant to this project, the Petitioner/Applicant and the farmers of two adjacent properties are undertaking a project to substitute winter appropriative rights to [s]storage for summer irrigation use in lieu of diversions for irrigation use under existing riparian rights. [Emphasis added.]

2. On July 31, 2009, the SWRCB issued its Order Approving Instream Flow Dedication ("Order"). The Order provided, inter alia:

1. From the period of July 1 to December 15 of each year, Petitioner shall dedicate to instream flows, all riparian water previously diverted for the purpose of irrigation under Statements of Water Diversion and Use 14759, 14760, and 14764. During this period, riparian water may be diverted for domestic and industrial purposes only. [Order, page 2.]

On the same date, the SWRCB issued Permit for Diversion and Use of Water 21249 ("Permit"), authorizing Petitioner to construct the reservoir, to divert to storage and to use water as specified.

3. On January 20, 2010, the SWRCB issued its Order Correcting Instream Flow Dedication ("Correction Order"). That Correction Order provided that the Order:

be modified to include the following language:

Beginning July 1, 2010, all riparian water previously diverted for the purpose of irrigation under Statements of Water Diversion and Use 14759, 14760, and 14764 shall be dedicated to instream flows from the period of July 1 to December 15 of each year. During this period, riparian water may be diverted for domestic and industrial purposes only. [Correction Order, page 1.]

4. The Order and the Correction Order do not accurately describe the Petitioner's proposed dedication under Water Code § 1707 because they do not recognize that the commencement of the proposed dedication of the riparian irrigation water diversions during the July 1 to December 15 period of each water year is conditioned upon the completion of construction of the reservoir and the availability for use of the water authorized to be appropriated to storage under the Permit, so that the appropriated water is available to substitute for and to be used in lieu of the riparian irrigation water diversions. Unless and until the reservoir is constructed and water is diverted to storage and available for use under the Permit, the Petition did not propose to

dedicate Petitioner's riparian irrigation water diversions during the July 1 to December 15 period.

5. Petitioner therefore requests that:

a. The Correction Order be rescinded.

b. The Order be amended such that Paragraph 1 be deleted in its entirety and replaced with the following text:

Beginning July 1 of the water year in which water is first diverted to storage pursuant to Permit No. 21246, all riparian water previously diverted for the purpose of irrigation under Statements of Water Diversion and Use 14759, 14760, and 14764 shall be dedicated to instream flows from the period of July 1 to December 15 of each year. During this period, riparian water may be diverted for domestic and industrial purposes only."

6. Petitioner requests that any questions or other communications concerning this Petition for Change be directed to:

Barry H. Epstein
Fitzgerald Abbott & Beardsley LLP
1221 Broadway, 21st Floor
Oakland, California 94612
T: (510) 451-3300
F: (510) 451-1527
E: bepstein@fablaw.com

California Environmental Protection Agency

State Water Resources Control Board

DIVISION OF WATER RIGHTS

P.O. Box 2000, Sacramento, CA 95812-2000

Info: (916) 341-5300, FAX: (916) 341-5400, Web: <http://www.waterrights.ca.gov>

**ENVIRONMENTAL INFORMATION
FOR PETITIONS**

☒ **Petition for Change**

☐ **Petition for Extension of Time**

Before the State Water Resources Control Board (SWRCB) can approve a petition to change your water right permit or a petition for extension of time to complete use, the SWRCB must consider the information contained in an environmental document prepared in compliance with the California Environmental Quality Act (CEQA). This form is not a CEQA document. If a CEQA document has not yet been prepared, a determination must be made of who is responsible for its preparation. As the petitioner, you are responsible for all costs associated with the environmental evaluation and preparation of the required CEQA documents. Please answer the following questions to the best of your ability and submit any studies that have been conducted regarding the environmental evaluation of your project. If you need more space to completely answer the questions, please number and attach additional sheets.

1. DESCRIPTION OF PROPOSED CHANGES OR WORK REMAINING TO BE COMPLETED

For a petition to change, provide a description of the proposed changes to your project including, but not limited to, type of construction activity, structures existing or to be built, area to be graded or excavated, increase in water diversion and use (up to the amount authorized by the permit), changes in land use, and project operational changes, including changes in how the water will be used. For a petition for extension of time, provide a description of what work has been completed and what remains to be done. Include in your description any of the above elements that will occur during the requested extension period.

See Attachment No. 1

☐ See Attachment No. ____

ENVIRONMENTAL INFORMATION FOR PETITIONS

2. COUNTY PERMITS

a. Contact your county planning or public works department and provide the following information:

Person contacted: _____ Date of contact: _____

Department: _____ Telephone: (____) _____

County Zoning Designation: _____

Are any county permits required for your project? ☐ YES ☐ NO If YES, check appropriate box below:

☐ Grading permit ☐ Use permit ☐ Watercourse ☐ Obstruction permit ☐ Change of zoning

☐ General plan change ☐ Other (explain): _____

b. Have you obtained any of the required permits described above? ☐ YES ☐ NO

If YES, provide a complete copy of each permit obtained.

☐ See Attachment No. ____

3. STATE/FEDERAL PERMITS AND REQUIREMENTS

a. Check any additional state or federal permits required for your project:

☐ Federal Energy Regulatory Commission ☐ U.S. Forest Service ☐ Bureau of Land Management

☐ Soil Conservation Service ☐ Dept. of Water Resources (Div. of Safety of Dams) ☐ Reclamation Board

☐ Coastal Commission ☐ State Lands Commission ☐ Other (specify) _____

b. For each agency from which a permit is required, provide the following information:

AGENCY	PERMIT TYPE	PERSON(S) CONTACTED	CONTACT DATE	TELEPHONE NO.

☐ See Attachment No. ____

c. Does your proposed project involve any construction or grading-related activity that has significantly altered or would significantly alter the bed or bank of any stream or lake? ☐ YES ☐ NO

If YES, explain: _____

☐ See Attachment No. ____

ENVIRONMENTAL INFORMATION FOR PETITIONS

- d. Have you contacted the California Department of Fish and Game concerning your project? ☐ YES ☐ NO
If YES, name and telephone number of contact: _____

4. ENVIRONMENTAL DOCUMENTS

- a. Has any California public agency prepared an environmental document for your project? ☐ YES ☐ NO
If YES, submit a copy of the latest environmental document(s) prepared, including a copy of the notice of determination adopted by the California public agency. Public agency: _____
- b. If NO, check the appropriate box and explain below, if necessary:
- ☐ The petitioner is a California public agency and will be preparing the environmental document.*
 - ☐ I expect that the SWRCB will be preparing the environmental document.**
 - ☐ I expect that a California public agency other than the State Water Resources Control Board will be preparing the environmental document.* Public agency: _____

☐ See Attachment No. _____

* **Note:** When completed, submit a copy of the final environmental document (including notice of determination) or notice of exemption to the SWRCB, Division of Water Rights. Processing of your petition cannot proceed until these documents are submitted.

** **Note:** CEQA requires that the SWRCB, as Lead Agency, prepare the environmental document. The information contained in the environmental document must be developed by the petitioner and at the petitioner's expense under the direction of the SWRCB, Division of Water Rights.

5. WASTE/WASTEWATER

- a. Will your project, during construction or operation, (1) generate waste or wastewater containing such things as sewage, industrial chemicals, metals, or agricultural chemicals, or (2) cause erosion, turbidity or sedimentation? ☐ YES ☐ NO
If YES, or you are unsure of your answer, explain below and contact your local Regional Water Quality Control Board for the following information (See instruction booklet for address and telephone no.):

☐ See Attachment No. _____

- b. Will a waste discharge permit be required for your project? ☐ YES ☐ NO

Person contacted: _____ Date of contact: _____

- c. What method of treatment and disposal will be used? _____

☐ See Attachment No. _____

6. ARCHEOLOGY

- a. Have any archeological reports been prepared on this project? ☐ YES ☐ NO
- b. Will you be preparing an archeological report to satisfy another public agency? ☐ YES ☐ NO
- c. Do you know of any archeological or historic sites located within the general project area? ☐ YES ☐ NO

ENVIRONMENTAL INFORMATION FOR PETITIONS

If YES, explain: _____

☐ See Attachment No. ____

7. ENVIRONMENTAL SETTING

Attach **three complete sets of color photographs**, clearly dated and labeled, showing the vegetation that exists at the below-listed three locations. For time extension petitions, the photographs should document only those areas of the project that will be impacted during the requested extension period.

- ☐ Along the stream channel immediately downstream from the proposed point(s) of diversion.
- ☐ Along the stream channel immediately upstream from the proposed point(s) of diversion.
- ☐ At the place(s) where the water is to be used.

8. CERTIFICATION

I hereby certify that the statements I have furnished above and in the attachments are complete to the best of my ability and that the facts, statements, and information presented are true and correct to the best of my knowledge.

Date: August 20, 2010

Signature:  _____

Barry H. Epstein
Fitzgerald Abbott & Beardsley LLP
Attorneys for Petitioner

Attachment No. 1
to Environmental Information for Petitions
Fresh Run Farm

1. This Petition seeks only a technical clarification to one provision of the text of the July 31, 2009 Order Approving Instream Flow Dedication ("Order"). There is no change to the underlying project, which includes the Order and the contemporaneously issued appropriative rights Permit for Diversion and Use of Water, and which has always involved a cessation of riparian irrigation diversions after July 1 of each year only after water diverted under the appropriative right has been first diverted to storage and is available to be used in lieu of water diverted under the riparian right.

Attached hereto is a copy of the Environmental Information for Petitions form that was submitted with the original Petition for Change under Water Code § 1707, filed March 19, 2009. Since there is no change to the underlying project, the information in that form remains applicable.

California Environmental Protection Agency

State Water Resources Control Board

DIVISION OF WATER RIGHTS

P.O. Box 2000, Sacramento CA 95812-2000

Info: (916) 341-5300, Fax (916) 341-5400, Web: <http://www.waterrights.ca.gov>

ENVIRONMENTAL INFORMATION
FOR PETITIONS

Fresh Run Farm

Compiled 10.04.2008

☒ Petition for Change

☐ Petition for Extension of Time

Before the State Water Resources Control Board (SWRCB) can approve a petition to change your water right permit or a petition for extension of time to complete use, the SWRCB must consider the information contained in an environmental document prepared in compliance with the California Environmental Quality Act (CEQA). This form is not a CEQA document. If a CEQA document has not yet been prepared, a determination must be made of who is responsible for its preparation. As the petitioner, you are responsible for all costs associated with the environmental evaluation and preparation of the required CEQA documents. Please answer the following questions to the best of your ability and submit any studies that have been conducted regarding the environmental evaluation of your project.

1. DESCRIPTION OF PROPOSED CHANGES OR WORK REMAINING TO BE COMPLETED

For a petition to change, provide a description of the proposed changes to your project, including, but not limited to, type of construction activity, structures existing or to be built, area to be graded or excavated, increase in water diversion and use (up to the amount authorized by the permit), changes in land use, and project operational changes, including changes in how the water will be used. For a petition for extension of time, provide a description of what work has been completed and what remains to be done. Include in your description any of the above elements that will occur during the requested extension period.

This Petition under Water Code Section 1707 accompanies an Application to Appropriate Water by the same Petitioner/Applicant and is part of the Pine Gulch Creek Enhancement Project. Pursuant to this project, the Petitioner/Applicant and the farmers of two adjacent properties are undertaking a project to substitute winter appropriative rights to storage for summer irrigation use in lieu of diversions for irrigation use under existing riparian rights. Under this Petition, riparian diversions for irrigation would cease from July 1 to December 15 of each year. (Domestic riparian diversions would continue on a year round basis.) See accompanying Application to Appropriate Water and documents referenced therein for further Project description.

For a detailed project description, please refer to the enclosed Mitigated Negative Declaration and accompanying Initial Study, Pine Gulch Creek Enhancement Project, adopted by Marin County November 15, 2007. See also Pine Gulch Creek Watershed, Water Availability Analysis and Cumulative Instream Impact Analysis (WAA/CFII) report by B. Ketcham, National Park Service, Nov. 3, 2005.

2. COUNTY PERMITS

a. Contact your County planning or public works department and provide the following information:

Person contacted: Jeremy Tejirian, Planner Date of contact: 2003 - present

Department: Marin County Community Development Agency - Planning Telephone: 415.499-3798

County Zoning Designation: C-APZ-60

Are any county permits required for your project? ☒ YES ☐ NO. If YES, check appropriate box below:

☐ Grading permit ☐ Use permit ☐ Watercourse

☐ Change of zoning ☐ General plan change ☐ Obstruction permit

☒ Other: Coastal Permit (CP03-4); Design Review Clearance (DC03-24)

b. Have you obtained any of the required permits described above? ☒ YES ☐ NO

If YES, provide a complete copy of each permit obtained.

3. STATE/FEDERAL PERMITS AND REQUIREMENTS

- a. Check any additional state or federal permits required for your project:

☐ Federal Energy Reg Com ☐ U.S. Forest Service ☐ U.S. Bureau of Land Management
☒ U.S. Army Corps of Engrs ☐ U.S. Natural Resource Cons Svc ☒ Calif. Dept. of Fish and Game
☐ State Lands Commission ☐ Calif. Dept. of Water Resources (Div. of Safety of Dams)
☐ Calif. Coastal Commission ☐ State Reclamation Board ☒ Other: US Fish/Wildlife
☒ Calif. Reg. Water Quality Control Board – SF Bay Region

- b. For each agency from which a permit is required, provide the following information:

AGENCY	PERMIT TYPE	PERSON(S) CONTACTED	CONTACT DATE	TELEPHONE NO.
US Fish & Wildlife	Safe Harbor Agr.	Rick Kuyper	Ongoing	(916) 414-6562
CDFG	Stream Alt Agr.	Region III	Ongoing	(707) 944-5562
US Army Corps	Sec 404	Mike D'Avignon	March 22, 2006	(415) 503-6773
CRWQCB-SFBR	Sec 401			

- c. Does your proposed project involve any construction or grading-related activity that has significantly altered or would significantly alter the bed, bank, or riparian habitat of any stream or lake?
- ☐
- YES
- ☒
- NO
-
- If YES, explain: _____

- d. Have you contacted the California Department of Fish and Game concerning your project?
- ☒
- YES
- ☐
- NO
-
- If YES, name and telephone number of contact:
- Jeremy Sarrow, Environmental Scientist (707) 944-5573

4. ENVIRONMENTAL DOCUMENTS

- a. Has any California public agency prepared an environmental document for your project?
- ☒
- YES
- ☐
- NO

- b. If YES, submit a copy of the latest environmental document(s) prepared, including a copy of the notice of determination adopted by the California public agency. Public agency: County of Marin
- Mitigated Negative Declaration and accompanying Initial Study Pine Gulch Creek Enhancement Project (Martinelli, Weber, New Land Fund Coastal Permit 03-4 & Design Review Clearance 03-24) Adopted by Marin County November 15, 2007
 - Biological Assessment, Pine Gulch Creek Watershed Enhancement Project Huffman-Broadway Group, Inc. April 2007.
 - Pine Gulch Watershed Water Availability and Instream Flow Analysis B. Ketcham, Hydrologist. Pt. Reyes National Seashore, Point Reyes Station CA 94956. Oct. 2003
 - A Cultural Resources Evaluation of the Pine Gulch Creek Watershed Enhancement Project, Agricultural Irrigation Storage, Bolinas, Marin County Archaeological Resource Service. 2001.
 - A Cultural Resources Evaluation of Three Additional Pond Sites, Pine Gulch Creek Watershed Enhancement Project, Agricultural Irrigation Storage, Bolinas, Marin County Archaeological Resource Service. 2003.

- c. If NO, check the appropriate box and explain below, if necessary:

☐ The petitioner is a California public agency and will be preparing the environmental document.*
☐ I expect that the SWRCB will be preparing the environmental document.**
☐ I expect that a California public agency other than the State Water Resources Control Board will be preparing the environmental document.* Public agency: County of Marin

* Note: When completed, submit a copy of the final environmental document (including notice of determination) or notice of exemption to the SWRCB, Division of Water Rights. Processing of your petition cannot proceed until these documents are submitted.

** Note: CEQA requires that the SWRCB, as Lead Agency, prepare the environmental document. The information contained in the environmental document must be developed by the petitioner and at the petitioner's expense under the direction of the SWRCB, Division of Water Rights.

ENVIRONMENTAL INFORMATION FOR PETITIONS

5. WASTE/WASTEWATER

- a. Will your project, during construction or operation, (1) generate waste or wastewater containing such things as sewage, industrial chemicals, metals, or agricultural chemicals, or (2) cause erosion, turbidity or sedimentation?
___ YES X NO

If YES, or you are unsure of your answer, explain below and contact your local Regional Water Quality Control Board for the following information (See instruction booklet for address and telephone no.):

- b. Will a waste discharge permit be required for your project? ___ YES X NO
Person contacted: _____ Date of contact: _____
- c. What method of treatment and disposal will be used? _____

6. ARCHEOLOGY

- a. Have any archeological reports been prepared on this project? X YES ___ NO
- b. Will you be preparing an archeological report to satisfy another public agency? X YES ___ NO
- c. Do you know of any archeological or historic sites located within the general project area? ___ YES X NO
- If YES, explain: Literature review and field investigation summarized in the 2001 and 2003 reports A Cultural Resources Evaluation of the Pine Gulch Creek Watershed Enhancement Project, Agricultural Irrigation Storage, Bolinas, Marin County and A Cultural Resources Evaluation of Three Additional Pond Sites, Pine Gulch Creek Watershed Enhancement Project, Agricultural Irrigation Storage, Bolinas, Marin County were used to identify known or suspected archaeological or historic sites in the general project area, which were then completely avoided in project scoping and development.

7. ENVIRONMENTAL SETTING

Attach three complete sets of color photographs, clearly dated and labeled, showing the vegetation that exists at the following three locations. For time extension petitions, the photographs should document only those areas of the project that will be impacted during the requested extension period.

- ___ Along the stream channel immediately downstream from the proposed point(s) of diversion.
- ___ Along the stream channel immediately upstream from the proposed point(s) of diversion.
- ___ At the place(s) where the water is to be used.

8. CERTIFICATION

I hereby certify that the statements I have furnished above and in the attachments are complete to the best of my ability and that the facts, statements, and information presented are true and correct to the best of my knowledge.

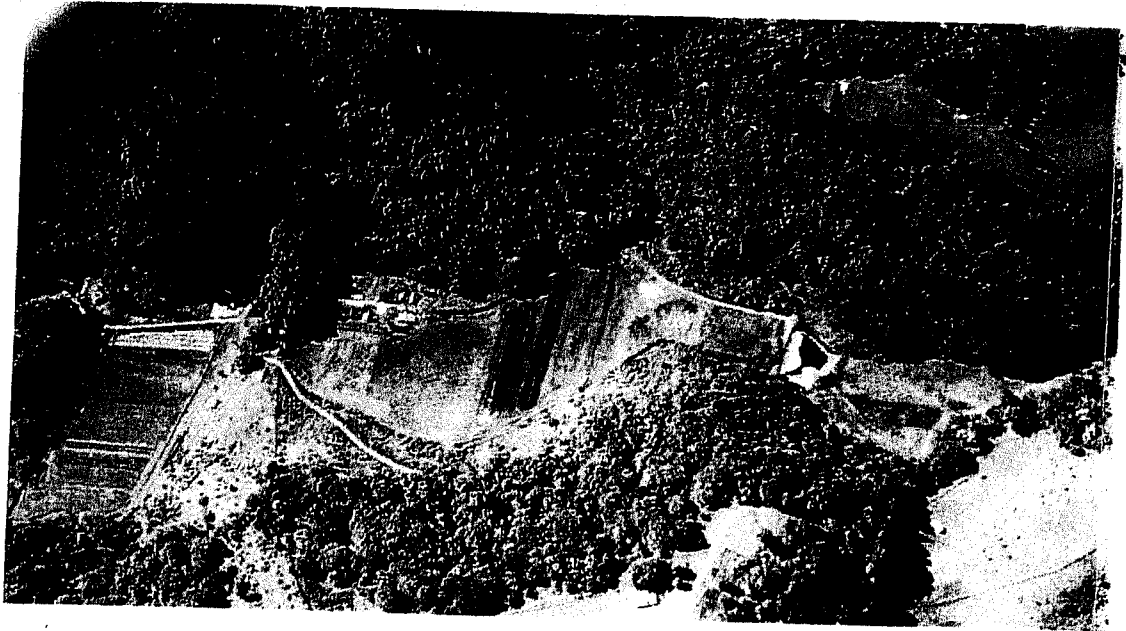


Signature of Applicant
Peter Martinelli

3-7-09

Date

Immediately upstream from the proposed point of diversion.



POU overview with active fields below Pine Gulch Creek flowing from top center to center and then left. POU 4 in canopy at left edge of left field. POU 5 at mouth of canyon in upper center. Existing Green Pond in center right. Pond 1B site in grassed meadow above Green Pond. Pond 1A site near white structure in upper right hilltop meadow.



Road in center traverses Green Pond levee. Pond 1B located beyond cars. Partial POU at left.

Peter Martinelli
Fresh Run Farm
615 Horseshoe Hill Road, Bolinas CA 94924
Oblique aerial photos taken January 8, 2003

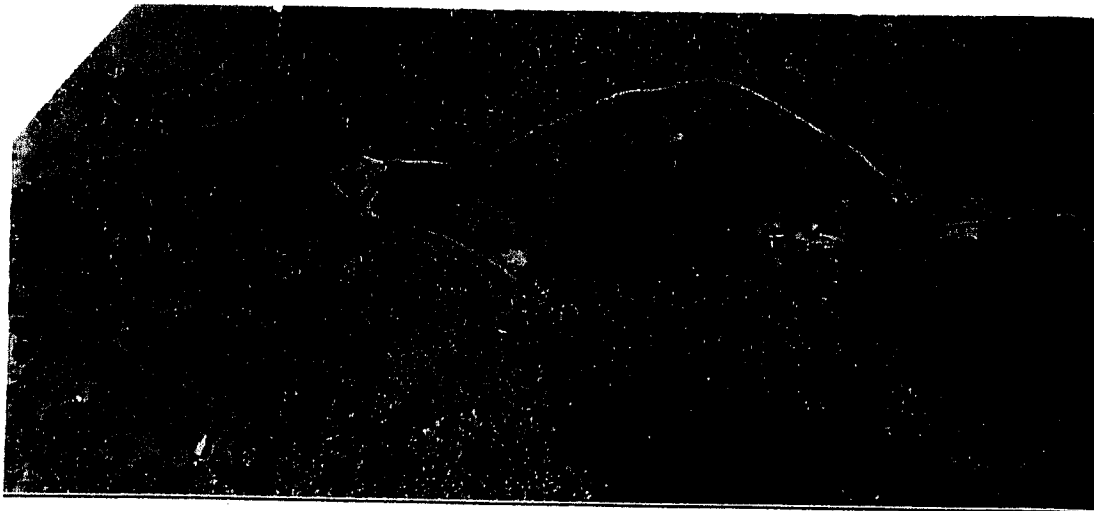
Environmental Setting Page 1.
Water Rights Application C6
Petition, Section 7
September 14, 2008

Immediately downstream from the proposed point of diversion.



Lower POU, with POD in lower right quadrant in trees at bottom of hill. Upper bench in distance contains level ground with annual grasses and coastal scrub suitable for farming that is presently not irrigated.

At the place(s) where the water is to be used.



Overview of POU towards East. Pond 1A in trees at lower left. Pond 1B above green pond. POU in fields in center and right of photo. No trees to be removed in open meadow settings.

Jennifer Dick-McFadden - RE: Pine Gulch

From: Jennifer Dick-McFadden
To: Epstein, Barry H.
Date: 8/18/2010 3:24 PM
Subject: RE: Pine Gulch
Attachments: pet_environmental_information.pdf

Barry,

I received the petitions for change. Upon my initial review it appears that the environmental forms were not submitted with the petitions. Can you please complete the attached environmental forms and send them to me? Thanks in advance.

Jennifer Dick-McFadden
Environmental Scientist
State Water Resources Control Board
Division of Water Rights
916-322-8568
jdick-mcfadden@waterboards.ca.gov

>>> On 8/6/2010 at 1:08 PM, in message <89BC2EE2D4CFFE4B873E7E68A86E115B05EBB448@fab-ex.fab.com>, "Barry H. Epstein" <bepstein@fablaw.com> wrote:

Jen-

Following up on the discussions I had some time ago with Steve Herrera, and those more recent discussions among Vicky, Tina Leahy, Nancy Scolari, etc., I am sending today to the Records Unit for filing four Petitions for Change with respect to the Pine Gulch Creek Enhancement Project 1707 Orders. Electronic copies are attached for your reference.

Per my conversation with Steve earlier this year, the fees are \$850 per Petition, plus an \$850 CDFG fee covering all four Petitions. Checks for those fees are included in the package with the Petitions.

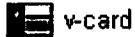
Also, towards the end of making sure that the amended Orders address the farmers' concerns, can you please provide drafts of the amended Orders to me for review before they are finalized?

Please contact me with any questions or concerns. (Note that I will be out of the office on vacation the week of 8/9 and will not be able to respond to voicemail or email during that time as I will be in the Sierra backcountry.)

Thanks.

-Barry

Barry H. Epstein
Fitzgerald Abbott & Beardsley LLP
1221 Broadway, 21st Floor
Oakland, CA 94612
tel 510.451.3300
fax 510.451.1527
bepstein@fablaw.com
www.fablaw.com



FITZGERALD ABBOTT & BEARDSLEY LLP
ATTORNEYS AT LAW

Important: This electronic mail message, including any attached files, is being sent by or on behalf of a lawyer; it is confidential and it may contain or constitute information protected by the attorney-client and/or the attorney work-product privileges. If the person actually receiving this message, or any other reader of this message, is not the named recipient, or the employee or agent responsible to deliver it to the named recipient, you are not authorized to retain, read, copy or disseminate this communication or any part of it. If you have received this communication in error, please immediately notify Fitzgerald Abbott & Beardsley LLP at (510) 451-3300. Thank you.

-----Original Message-----

From: Nancy Scolari [mailto:nancy@marinrcd.org]

Sent: Tuesday, July 20, 2010 1:54 PM

To: 'Vicky Whitney'

Cc: cjwhit@comcast.net; 'Jennifer Dick-McFadden'; 'Jim Kassel'; 'Michael Bowen'; Barry H. Epstein

Subject: RE: Pine Gulch

Hello Vicky,

It sounds like we received a different message. Any rate, the Conservancy will redraft the petitions for filing. Thank you for the instructions. We will contact your office if we have any questions.

Thank you,
Nancy

From: Vicky Whitney [mailto:VWHITNEY@waterboards.ca.gov]

Sent: Tuesday, July 13, 2010 1:26 PM

To: Nancy Scolari

Cc: cjwhit@comcast.net; Jennifer Dick-McFadden; Jim Kassel

Subject: Re: Pine Gulch

Nancy,

It sounds as if you think that the State Water Board is redrafting the petitions. The State Water Board will redraft the 1707 orders and permits as necessary, but the project proponents must file the petitions and associated fees with the State Water Board to begin the process. In the petitions, you should identify the condition of the order that you believe is a problem, describe briefly why it is a problem, and ask us to change it.

As I understand it (and not having the order in front of me), you object to the condition in the 1707 order that limits the diversion of water under the riparian rights claim as of this summer. The reason is that the reservoir storage facilities are not yet constructed and the water right permits for the reservoirs allow the farmers a period of time to make beneficial use of the water under the permits, and you want the condition changed so that the restrictions in the 1707 order track the development schedule in the water right permit.

As you may know, Steve Herrera has retired. For assistance on this project, please contact Jennifer Dick-McFadden of this office. Jennifer is the staff person who is most familiar with the permits and order. You may also contact Jim Kassel. Jim is the Assistant Deputy Director for Water Rights, and was Steve's immediate supervisor. I've copied both Jennifer and Jim's emails on this so that you have their contact info.

Thanks,

Vicky

>>> Nancy Scolari <nancy@marinrcd.org> 7/13/2010 10:16 AM >>>

Hello Vicky,

I am just checking in with you. We received your letter confirming the water board's inaction during which time the petitions are being redrafted. Thank you! Is there anything we need to do at this point? Should we just wait to receive the redrafted petitions?

Thank you!

Nancy Scolari

Marin Resource Conservation District

P.O. Box 1146 / 80 Fourth Street, Rm 202

Point Reyes Station, CA 94954

Phone: 415.663.1170

Fax: 415.663.0421

nancy@marinrcd.org

www.marinrcd.org

5014759

SURNAME



State Water Resources Control Board



Division of Water Rights

1001 I Street, 14th Floor ♦ Sacramento, California 95814 ♦ 916.341.5300

P.O. Box 2000 ♦ Sacramento, California 95812-2000

Fax: 916.341.5400 ♦ www.waterboards.ca.gov/waterrights

Linda S. Adams

Secretary for

Environmental Protection

Arnold Schwarzenegger

Governor

JUN 30 2010

In Reply Refer To:

JDM:31749-31752

Star Route Farms North Parcel
Star Route Farms South Parcel
c/o Warren and Amy Weber Trust
95 Olema-Bolinas Road
Bolinas, CA 94924

New Land Fund
c/o Dennis Dierks
P.O. Box 382
Bolinas, CA 94924

Fresh Run Farm
c/o Peter Martinelli
P.O. Box 478
Bolinas, CA 94924

Dear Mr. and Mrs. Weber, Mr. Dierks, and Mr. Martinelli:

CLARIFICATION OF APPROVAL OF THE INSTREAM FLOW DEDICATION PURSUANT TO WATER CODE SECTION 1707 FOR STATEMENTS 8209, 14981, 14759, 14760, AND 14764 AND PERMITS 21246 THROUGH 21249 OF PINE GULCH CREEK WATERSHED ENHANCEMENT PROJECT TO APPROPRIATE WATER FROM PINE GULCH CREEK TRIBUTARY TO BOLINAS LAGOON THENCE THE PACIFIC OCEAN IN MARIN COUNTY

On March 19, 2009, Star Route Farms North Parcel, Star Route Farms South Parcel, New Land Fund, and Fresh Run Farm (collectively known as Pine Gulch Creek Watershed Enhancement Project) filed applications with the State Water Resources Control Board (State Water Board), Division of Water Rights (Division) to appropriate water by permit and instream flow dedication petitions for change on statements of water diversion and use pursuant to Water Code section 1707. The project intends to enhance summer flows in Pine Gulch Creek by utilizing wet season appropriative diversions in lieu of dry season riparian diversions. Limited riparian diversion in the spring (April through June), and appropriative storage of winter diversions would accommodate the continuing agricultural water needs. As requested in the instream flow dedication change petitions, riparian diversions between July 1 and December 15 would be dedicated to instream flow for the benefit of coho salmon and steelhead trout pursuant to Water Code section 1707.

On July 31, 2009, the Division issued orders approving Permits 21246 through 21249 (Applications 31749 through 31752) and the associated instream flow dedication change petitions. On October 30, 2009, your agent, Barry Epstein, contacted the Division and expressed concern with the permits and instream flow dedication change petition orders issued for the above referenced applications and statements. Mr. Epstein indicated that the permits contained a term that was inconsistent with the Safe Harbor Agreement with the U.S. Fish and Wildlife Service and that the orders approving the instream flow dedication change petitions did not provide a temporal linkage between the appropriative rights and the cessation of summer riparian diversions. In response to Mr. Epstein's comments, the Division issued amended permits and orders on January 20, 2010 pursuant to Water Code section 1124. The amendments included a term consistent with the Safe Harbor Agreement and a description of

California Environmental Protection Agency

SURNAME

Recycled Paper

Kassch 6/17/10

the temporal linkage between the appropriative rights and the cessation of summer riparian diversions based on information provided in the applications as filed.

Based on the information included in the January 25, 2010 email sent by Barry Epstein to the Division the original time frame, identified in the applications as filed, is no longer valid due to an unforeseen lack of project funding. It is my understanding that you have concerns with respect to the temporal linkage of the riparian and appropriative rights and the Division's authority to issue an enforcement action if riparian water diversions for irrigation occur between July 1 and December 15.

Water Code section 1052 states that civil liability may be administratively imposed by the board pursuant to section 1055 for a trespass as defined in this section in an amount not to exceed \$500 for each day in which the trespass occurs. Please note that the State Water Board has discretion when taking enforcement actions. The current permits provide a period of 10 years in which the construction and full use of the water must be made. Permit term 9 in Permits 21246 through 21249 requires construction work and complete application of the water to the authorized use be prosecuted with reasonable diligence and completed by December 31, 2019. The State Water Board does not intend to enforce against the Pine Gulch Creek Watershed Enhancement Project participants for diversion of summer riparian water for irrigation until that date or until the reservoirs are constructed and are operational, whichever occurs first. If the reservoirs have not been constructed and the water has not been put to full use under the permits by December 31, 2019, a petition for extension of time may be required pursuant to California Code of Regulations section 842.

If you have any additional questions, please contact me at (916) 341-5302 or by email at vwhitney@waterboards.ca.gov.

Sincerely,

ORIGINAL SIGNED BY:

Victoria A. Whitney
Deputy Director for Water Rights

cc: Fitzgerald, Abbot and Beardsley, LLP
c/o Barry Epstein
1221 Broadway, 21st Floor
Oakland, CA 94612

California State Coastal Conservancy
c/o Michael Bowen
1330 Broadway, 13th Floor
Oakland, CA 94612

California State Coastal Conservancy
c/o Samuel Schuchat, Executive Officer
1330 Broadway, 13th Floor
Oakland, CA 94612

Barry H. Epstein

- 3 -

Trout Unlimited
c/o Chuck Bonham, Director
1808B 5th Street
Berkeley, CA 94710

ANT: DCC: 06/17/10

U:\PERDRV\NguyenTan\Pine Gulch Enhancement\1707 Enforcement Clarification.doc

CONTACT REPORT

DIVISION OF WATER RIGHTS

STATE WATER RESOURCES CONTROL BOARD

Division Personnel: Jennifer Dick-McFadden

Applications: 31749 et al of Pine Gulch Enhancement Project

Individual(s)/Agency Contacted: Barry Epstein

Number: 510-451-3300 **Date:** February 9, 2010 **Time:** 10:00am

Conversation Description:

I contacted Mr. Epstein regarding the questions he raised regarding compliance term 0000070 in the permits and the time schedule provided in the 1707 Amended Orders. I advised Mr. Epstein that after discussing the issues with Steven Herrera, it was determined that the temporal linkage of the permits and 1707 orders as requested in his emails was completed accurately. Applications 31749 through 31752 indicate that construction of the reservoirs would begin in 2009 and first water use would be in 2010. The 1707 petitions indicate that summer riparian diversions would be substituted with appropriative rights. Since the Applicants stated the year of first use under their appropriative rights would be in 2010, they would be unable to divert summer riparian water as stated in the 1707 petitions. If the Applicants want to have the temporal linkage amended, a petition for change would be necessary. I advised Mr. Epstein that since we will process these petitions for change as one project that only one DFG fee would be needed. I also advised Mr. Epstein that the original CEQA document can be used for processing the petitions for change since the document did not specify an exact time frame for the substitution of appropriative rights for riparian claims.

Regarding the compliance term, I advised Mr. Epstein that some if not all of the information requested in the term may be available in the CEQA document. He indicated he will review the information to see if it is readily available. If the information is not available he may include a request to change the term to allow for additional time in the petitions for change.

Mr. Epstein indicated he was not pleased with the Division's decision and requested to discuss the issues with Mr. Herrera directly. I advised Mr. Epstein that I would have Mr. Herrera contact him.

Decision(s):

Action Items: Provide Mr. Herrera with Mr. Epstein's phone number


Jennifer Dick-McFadden - RE: Pine Gulch

From: "Barry H. Epstein" <bepstein@fablaw.com>
To: "Jennifer Dick-McFadden" <JDick-McFadden@waterboards.ca.gov>
Date: 1/29/2010 9:33 AM
Subject: RE: Pine Gulch
Attachments: vcard.gif; fab.gif

Not a problem. Thanks for the update. Sorry you were down with something -- it's the season. Lots going around my office, as well. I'm keeping my door closed.

-Barry

Barry H. Epstein
Fitzgerald Abbott & Beardsley LLP
1221 Broadway, 21st Floor
Oakland, CA 94612
tel 510.451.3300
fax 510.451.1527
bepstein@fablaw.com
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-----Original Message-----

From: Jennifer Dick-McFadden [mailto:JDick-McFadden@waterboards.ca.gov]
Sent: Friday, January 29, 2010 7:59 AM
To: Barry H. Epstein
Subject: Pine Gulch

Barry,

I wanted to apologize for not getting back to you sooner. I have been out the last few days sick. Steve has had meetings scheduled all week so I will not be able to talk to him about Pine Gulch until sometime next week. I will contact you after our discussion. Thanks.

Jennifer Dick-McFadden
Environmental Scientist
State Water Resources Control Board
Division of Water Rights
916-322-8568
jdick-mcfadden@waterboards.ca.gov

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Jennifer Dick-McFadden - RE: Pine Gulch

From: "Barry H. Epstein" <bepstein@fablaw.com>
To: "Jennifer Dick-McFadden" <JDick-McFadden@waterboards.ca.gov>
Date: 1/25/2010 1:23 PM
Subject: RE: Pine Gulch
CC: "Nancy Scolari" <nancy@marinrcd.org>, <cjwhit@comcast.net>
Attachments: vcard.gif; fab.gif; FAB-359438-v1-Excerpts from PGC documents.DOC

Jen-

Further to our phone conversation, I went back to review the 1707 Petitions, the Negative Declaration/Initial Study and my cover letter to Vicky Whitney that accompanied the submittal of the Applications and Petitions. I have attached excerpts from these three documents, which I think will help staff revisit this question.

These documents make it very clear that the 1707 dedications were to be directly linked to the appropriations, and were not to go into effect until the appropriated water could be substituted for the current riparian diversions. These documents -- including the 1707 Petitions themselves -- expressly discuss "substituting" the appropriative water storage for the riparian diversions, "directly linking" the appropriations and the dedication of the riparian rights, and using the appropriative water "in lieu of" the riparian diversions. The concept of "substituting" the sources and using the appropriative water "in lieu of" the riparian diversions clearly have a temporal element.

In light of that, it seems to me that the absence, in the original 1707 Orders, of an express provision -- temporally linking the commencement of the dedication with the development of the appropriative ponds, as was requested in the Petitions -- was an oversight. The recent correction Orders, however, are an even worse deviation from Petition, and from the underlying purpose of the Project, in setting the effective date for the dedication as the 2010 summer season, even though the appropriative ponds will not have been built or have stored water by then. Rather, consistent with the request for "substitution," "linkage" and "in lieu" use, as was discussed in the Petitions and the accompanying materials, the 1707 dedications should become effective in the first summer after the ponds are filled.


Whether by administrative correction or otherwise, we need to address this timing problem. While the RCD and others are actively seeking funding for the pond construction, all of the funding has not yet been located. Moreover, the ponds still need the 404 wetlands permits (a new wetland delineation currently is underway) and the 1602 SAAs from CDFG. Those applications will be submitted in the next month or two. It is not tenable to put the farmers in the position of having to violate the 1707 Orders or else not irrigate their crops until the ponds are built. The purpose of this project was never conceived of putting them into that type of economic or enforcement jeopardy.

Please let me know Board staff's thinking after you have considered the above and attached, and our conversation today. At that time, we can also address the extension of the Compliance Plan deadline in the Permits, since the design details required by that Permit Term are not yet known and will not be known until the pond design is completed early in the Construction Phase of the Project.

Thank you.

-Barry

Barry H. Epstein
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-----Original Message-----

From: Jennifer Dick-McFadden [mailto:JDick-McFadden@waterboards.ca.gov]

Sent: Monday, January 25, 2010 10:39 AM

To: Barry H. Epstein

Subject: Pine Gulch

I just wanted to let you know that both Steve and Katy are in a meeting that is scheduled to last all day. I may not be able to discuss the project with them until tomorrow.

Negative Declaration/Initial Study (Marin County):

...the project sponsor proposes a project to enhance summer flows in Pine Gulch Creek by substituting wet season appropriative diversions for dry season riparian diversions.... As part of this program, the farmers would dedicate all of their agricultural riparian diversions between July 1 and December 15 to in-stream flow for the benefit of coho salmon and steelhead trout. **This dedication would be linked directly with the appropriative storage rights associated with the proposed ponds.** (pp. 3-4)

....
...The farmers would dedicate all of their riparian diversions between July 1 and December 15 to in-stream flow for the benefit of coho salmon and steelhead trout. **This dedication would be linked directly with the appropriate storage rights associated with the proposed ponds....**

* * *

1707 Petitions

This Petition under Water Code 1707 **accompanies an Application to Appropriate Water by the same Petitioner/Applicant** and is part of the Pine Gulch Creek Enhancement Project. Pursuant to this project, the Petitioner/Applicant and the farmers of the two adjacent properties are undertaking a project to substitute winter appropriate rights to storage for summer irrigation use in lieu of diversion for irrigation use under existing riparian rights.

* * *

March 11, 2009 letter to Vicky Whitney from Barry Epstein (this letter accompanied the submittal of the Applications to Appropriate and the 1707 Petitions for Change):

Currently, the three farmers are exercising their riparian rights to withdraw water from Pine Gulch Creek, including substantial diversions during the summer growing season to meet their irrigation needs. **The purpose of the Project is to enhance summer instream flows in Pine Gulch Creek, while securing a continued adequate supply of water for the farmers' use, by substituting winter appropriative diversions for summer riparian irrigation diversions....**

Under the Project, five off-stream storage ponds will be constructed on the farms and filled with winter sheet flow and diversions from Pine Gulch Creek and unnamed tributaries to the Creek. **Development of the off-stream storage will allow the Farmers to forego *any* diversions from the Creek for irrigation during the summer season (July 1 to December 15).**

....
The farmers will dedicate all of their riparian irrigation diversions between July 1 and December 15 to in-stream flow for the benefit of Coho salmon and steelhead trout under California Water Code §1707. **This dedication will be linked directly to the appropriative storage rights associated with the proposed ponds.**

....

*Whitney from Barry
Appropriate and the*

These permits, approvals and agreements are all part of the **Permit Acquisition stage** of the Project. Following this stage, **a construction phase will involve development of construction drawings, securing grading and building permits, and actual construction of the ponds and new diversion facilities.**

Storms will allow the
the summer season

Storms will allow the
the summer season



State Water Resources Control Board



Linda S. Adams
Secretary for
Environmental Protection

Division of Water Rights
1001 I Street, 14th Floor ♦ Sacramento, California 95814 ♦ 916.341.5300
P.O. Box 2000 ♦ Sacramento, California 95812-2000
Fax: 916.341.5400 ♦ www.waterboards.ca.gov/waterrights

Arnold Schwarzenegger
Governor

JAN 20 2010

In Reply Refer To:
JDM:31752 et al

Fresh Run Farms
c/o Barry H. Epstein
Fitzgerald Abbott & Beardsley, LLP
1221 Broadway, 21st Floor
Oakland, CA 94612

Dear Mr. Epstein:

ORDERS CORRECTING THE APPROVAL OF THE INSTREAM FLOW DEDICATION PURSUANT TO WATER CODE SECTION 1707 TO DEDICATE RIPARIAN DIVERSION FOR STATEMENTS 14759, 14760 AND 14764 AND PERMIT 21249 (APPLICATION 31752) TO APPROPRIATE WATER FROM PINE GULCH CREEK TRIBUTARY TO BOLINAS LAGOON THENCE THE PACIFIC OCEAN IN MARIN COUNTY

By orders dated January 20, 2010, the State Water Resources Control Board (State Water Board) Division of Water Rights (Division) approved changes in the July 31, 2009 orders approving Permit 21249 pursuant to Application 31752 and petition for change dedicating instream flow under the riparian diversions claimed under Statements of Water Diversion and Use 14759, 14760 and 14764. The following corrections were made due to administrative oversight:

Statement 14759

The January 20, 2010 order includes timing information that was omitted due to an administrative oversight. The enclosed order includes the following language to clarify the commencement of the dedication:

1. Beginning July 1, 2010, all riparian water previously diverted for the purpose of irrigation under Statements of Water Diversion and Use 14759, 14760, and 14764 shall be dedicated to instream flows from the period of July 1 to December 15 of each year. During this period, riparian water may be diverted for domestic and industrial purposes only.

Permit 21249

The January 20, 2010 order amends permit term 0400500 to include provisions for compliance with the United States Fish and Wildlife Service's Safe Harbor Agreement for the protection of California red-legged frog (*Rana aurora draytonii*). The following amendment has been made to Permit 21249 (emphasis added):

1. To prevent the introduction of invasive species and for the protection of potential habitat of California red-legged frog (*Rana aurora draytonii*), Permittee *shall comply with the following or provide annual written and photographic evidence of compliance with the*

California Environmental Protection Agency

SURNAME

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1/20/10

Safe Harbor Agreement, Attachment 3, Section 1A on file with the Division of Water Rights:

- a) Not stock and shall not allow others to stock fish in any reservoir;
- b) Cause an aquatic ecologist or biologist, whose qualifications are acceptable to the Deputy Director for Water Rights, to monitor the reservoirs authorized under this permit on an annual basis for the presence of fish or other exotic aquatic predators. Within 30 days of discovery of fish or other exotic aquatic predators, Permittee shall consult with the Division of Water Rights and the Department of Fish and Game to develop a control plan acceptable to the Deputy Director for Water Rights. This plan shall include an implementation schedule, and may include draining the reservoirs where fish or exotic aquatic predators are found; Prepare or cause to be prepared annually a report describing the methodology used to survey the reservoirs for the presence of fish or exotic aquatic predators, the dates when the surveys occurred, and what actions were taken if any were found. These monitoring reports shall be submitted to the Division of Water Rights with all required Reports of Permittee, Reports of Licensee, and whenever requested by the staff of the Division of Water Rights.

(0400500)

Water Code Section 1124 authorizes modifications of an order without the necessity of notice or hearing in order to correct an obvious oversight. State Water Board Resolution 2007-0057 delegates the State Water Board's authority to modify orders in such cases to the Deputy Director for Water Rights. By memorandum dated October 4, 2007, this authority was redelegated to the Manager of the Permitting Section. Pursuant to Water Code Section 1124 and the delegation of authority in State Water Board Resolution 2007-0057, I am enclosing an order that corrects the July 31, 2009 order issued in the matter of Riparian Diversion Statements of Water Diversion and Use 14759, 14760, and 14764, as well as a copy of Amended Permit 21249. As indicated in the enclosed order, all other conditions set forth in the July 31, 2009 order remain in effect.

I regret any inconvenience or confusion that our earlier oversight may have caused. If you have any questions, please contact Katherine Washburn at (916) 341-5386.

Sincerely,

ORIGINAL SIGNED BY:

Steve Herrera
Permitting Section Manager

Enclosures

ANguyenTan:ds 01/19/2010

U:\PERDRV\ANguyenTan\Pine Gulch Enhancement\Permit\1707 Dedication 14759 et al (31752)\Corrected order cover letter 14759(31752).doc

STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
STATE WATER RESOURCES CONTROL BOARD

DIVISION OF WATER RIGHTS

In the Matter of Riparian Diversion Statements 14759, 14760 and 14764
Fresh Run Farms

ORDER CORRECTING INSTREAM FLOW DEDICATION

SOURCE: Pine Gulch Creek tributary to Bolinas Lagoon thence Pacific Ocean

COUNTY: Marin

WHEREAS:

1. On July 31, 2009, the State Water Resources Control Board, Division of Water Rights (Division) approved a petition for change in purpose and place of use, pursuant to Water Code Section 1707, for riparian diversion claimed under Statements of Water Diversion and Use 14759, 14760, and 14764.
2. From the period of July 1 to December 15 of each year, Petitioner shall dedicate to instream flows, all riparian water previously diverted for the purpose of irrigation under Statements of Water Diversion and Use 14759, 14760, and 14764.
3. Due to administrative oversight, the July 31, 2009 order did not specify that the instream flow dedication would begin once the project was complete and operational. Section 8 (b) of Application 31752 states that the project will be constructed in 2009 and the year of first use will be 2010.
4. Pursuant to Water Code Section 1124, the board may at any time amend or modify a decision or order to correct any obvious typographical or clerical error or oversight without the necessity of notice and a hearing thereon. This authority has been delegated to the Deputy Director for Water Rights pursuant to Resolution 2007-0057 dated September 18, 2007. In a memorandum dated October 4, 2007, this authority was re-delegated to the Manager of the Permitting Section.


NOW, THEREFORE, IT IS ORDERED THAT:

1. The order be modified to include the following language:

Beginning July 1, 2010, all riparian water previously diverted for the purpose of irrigation under Statements of Water Diversion and Use 14759, 14760, and 14764 shall be dedicated to instream flows from the period of July 1 to December 15 of each year. During this period, riparian water may be diverted for domestic and industrial purposes only.

2. All other conditions specified in the Division of Water Rights Order dated July 31, 2009 are not affected by this order.

STATE WATER RESOURCES CONTROL BOARD


Victoria A. Whitney *for*
Deputy Director for Water Rights

Dated: **JAN 20 2010**

STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
STATE WATER RESOURCES CONTROL BOARD

DIVISION OF WATER RIGHTS

In the Matter of Riparian Diversion Statements 14759, 14760 and 14764
Fresh Run Farms

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2. From the period of July 1 to December 15 of each year, Petitioner shall dedicate to instream flows, all riparian water previously diverted for the purpose of irrigation under Statements of Water Diversion and Use 14759, 14760, and 14764.
3. Due to administrative oversight, the July 31, 2009 order did not specify that the instream flow dedication would begin once the project was complete and operational. Section 8 (b) of Application 31752 states that the project will be constructed in 2009 and the year of first use will be 2010.
4. Pursuant to Water Code Section 1124, the board may at any time amend or modify a decision or order to correct any obvious typographical or clerical error or oversight without the necessity of notice and a hearing thereon. This authority has been delegated to the Deputy Director for Water Rights pursuant to Resolution 2007-0057 dated September 18, 2007. In a memorandum dated October 4, 2007, this authority was re-delegated to the Manager of the Permitting Section.

NOW, THEREFORE, IT IS ORDERED THAT:

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2. All other conditions specified in the Division of Water Rights Order dated July 31, 2009 are not affected by this order.

STATE WATER RESOURCES CONTROL BOARD

ORIGINAL SIGNED BY: *SRH for*

Victoria A. Whitney
Deputy Director for Water Rights

Dated: **JAN 20 2010**

ANguyenTan:ds 01/19/2010
U:\PERDRV\ANguyenTan\Pine Gulch Enhancement\Permit\1707 Dedication 14759 et al
(31752)\Corrected 1707 Order 14759(31752).doc

Jennifer Dick-McFadden - FW: Pine Gulch Creek Enhancement Project

From: "Barry H. Epstein" <bepstein@fablaw.com>
To: SHERRERA@waterboards.ca.gov; JDick-McFadden@waterboards.ca.gov; ANguyenTan@waterboards.ca.gov
Date: 12/17/2009 7:00 PM
Subject: FW: Pine Gulch Creek Enhancement Project
CC: mbowen@scc.ca.gov; nancy@marinrcd.org; cjwhit@comcast.net
Attachments: vcard.gif; fab.gif; FAB-354584-v4-Revised SHA to address R. Kuyper comments.DOC

Steve, Angela and Jennifer-

Re my email below, I subsequently had a conversation about this with Phil Crader and he was going to follow up on both points. However, he has since been reassigned to greater tasks.

In addition, since that email and subsequent conversation with Phil, the final language of the Safe Harbor Agreement for CRLF has now been approved by FWS and is in the process of being signed. Therefore, I can slightly narrow the request on that score (point #1, below). I would like to get your response to the suggestion that the Permit Terms regarding CRLF protection be modified to substitute the mandatory end-of-season draining protocol set out in the SHA in lieu of the annual biological survey and consultation process now included in the Permit Terms. I am attaching the entire final SHA. However, for convenience, I excerpt here the operative terms from Section I.A. of Attachment 3 to the SHA:

- Ponds shall be managed each fall in such a manner to control populations of bullfrogs and other California red legged frog predators as follows:
 - On a date selected by a Cooperator after not earlier than September 15 but no later than November 15, each pond will be drained to the Lowest Feasible Level. [Note to SWRCB staff: this term is defined earlier in the SHA as "the lowest level feasible depending on topography and final elevations of the ponds, as constructed and maintained."]
 - If significant standing water remains in a pond when drained to the Lowest Feasible Level, the Cooperator [Note to SWRCB staff: The "Cooperator" is the same as the holder of the appropriative Permit -- i.e., each of the three farmers] will pump additional water from the pond until all feasible standing water has been removed using commercially reasonable measures.
 - A Cooperator shall not re-fill a pond for at least four (4) weeks after the date on which water has been removed from the pond as set forth in the preceding two bullets.

The other issue discussed below continues to be a significant concern, as well. It was never intended that the farmers would dedicate their summer riparian irrigation diversions to instream use under 1707 until after the new ponds were built and filled for the first time. That temporal connection between the effective date of the 1707 Orders and the appropriative rights Permits just did not get made explicitly in the 1707 Orders.


My discussion with Phil was that he was going to check with Vicky about the easiest path to institute the changes to the Permit Term re CRLF and the changes to the 1707 Orders to make the temporal linkage to the pond filling under the Permits. Since he has been reassigned and had not gotten back to me, I suspect he ran out of time and did not determine the easiest remedies. If you would pick this up now and let me know how you suggest we proceed, I would appreciate it. Thanks,

-Barry

Barry H. Epstein
Fitzgerald Abbott & Beardsley LLP
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Oakland, CA 94612
tel 510.451.3300
fax 510.451.1527

bepstein@fablaw.com

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-----Original Message-----

From: Barry H. Epstein

Sent: Friday, October 30, 2009 6:15 PM

To: 'JDick-McFadden@waterboards.ca.gov'; 'ANguyenTan@waterboards.ca.gov'

Cc: Carol Jane Whitmire (cjwhit@comcast.net); Nancy Scolari (nancy@marinrcd.org); Michael Bowen (mbowen@scc.ca.gov)

Subject: Pine Gulch Creek Enhancement Project

Jennifer and Angela-

You probably thought you were done with this project, but two questions have come up regarding the Pine Gulch Creek appropriative Permits and 1707 instream dedication Orders. I was not sure whether to address these to you, or to other Board staff (Vicky? Steve?), so please let me know if they should be directed elsewhere.

The appropriative rights Permit Term regarding management of the ponds for CRLF are

\\C:\Documents and Settings\staff\Local Settings\Temp\XPgrpwise\4B692560SecDom1HQpo110013931... 2/9/2010

slightly inconsistent with what we expect will be required under the Safe Harbor Agreement (SHA) with USFWS. Basically, the Permit Term requires annual monitoring by a biologist for the presence of predator species and then, if predators are found, consultation and development of measures such as draining of the ponds. (As you probably know, draining of the ponds in the Fall is thought to interrupt the breeding cycle of bullfrogs but not to adversely affect CRLF.)

In contrast, the SHA (current draft) simply requires annual draining in the Fall, after the end of the irrigation season but at least four weeks before the diversion season start date of 12/15, in order to provide a one-month period in which the ponds will be largely devoid of water. Since the SHA specifies this measure for bullfrog control, it does not require monitoring for predator species. (The draft SHA also specifically prohibits the knowing introduction of bullfrogs, crayfish, mosquito fish and other fishes.)

Assuming that the SHA is finalized with the above draining and no introduction requirements, the steps of annual biological monitoring followed by consultation about management measures for predators -- as provided in the Permit Term -- would seem to be unnecessary (and it is also going to be quite expensive for the farmers to pay for a special aquatic biologist to monitor each year).

So, the question is whether it might be possible to modify that Permit Term (in all of the permits) to track the USFWS requirements expected in the SHA, and if so, what would be involved in making that change?

2. I think there is a temporal element missing from the 1707 Orders. Specifically, the Orders appear to require the dedication of former riparian irrigation diversions to commence now, before the appropriative ponds have been built and filled. Of course, that was never the intention, since the plan is to develop the appropriative ponds and fill them before the farmers stop diverting for irrigation under their riparian rights. (The Recitals to the Order reference the corresponding appropriative rights, but there is nothing explicit I see in the Order that defers its operation until the appropriations are actually made.)

It appears that it will be at least several years before the ponds can be built and begin to operate. As indicated above, the SHA still needs to be finalized. Additionally, the Corps 404 permit and CDFG Streambed Alteration Agreements are being worked on now. However, when all of that is done, we have to find funds to construct the ponds. Various sources are being explored but funding has not yet been secured. We are, however, continuing with some engineering work so that bids can be obtained.

Thus, the 1707 dedications cannot be made right away without cutting off the farmers' summer irrigation supply entirely, which I'm sure was not the intent.

This may not be a matter that requires amendment of the Orders so much as interpretation of them in the context in which they were adopted -- that is, they were tied to the exercise of the appropriative rights. But I thought I should mention this, since the farmers obviously do not

Message

want to be in a violation situation. Please let me know whether or how we should address this question.


Thanks for considering the above. I look forward to your response.

-Barry

Barry H. Epstein
Fitzgerald Abbott & Beardsley LLP
1221 Broadway, 21st Floor
Oakland, CA 94612
tel 510.451.3300
fax 510.451.1527

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From: Phillip Crader
To: Dick-McFadden, Jennifer; Nguyen-Tan, Angela
CC: Herrera, Steve
Date: 12/3/2009 1:01 PM
Subject: Fwd: RE: Pine Gulch Creek - Safe Harbor Agreement

FYI

>>> "Wise, Scott" <SWise@co.marin.ca.us> 12/3/2009 12:13 PM >>>
Hi Rick and Barry,

"The Marin County Agricultural Commissioners Office can sign a copy of the 12-2-09 version and send it to the FWS."

This is exciting news! Please send Stacy Carlsen (scarlsen@co.marin.ca.us) and I a copy of the 12-2-09 version as soon as possible.

Thank you,

Scott

Scott Wise

Inspector, County of Marin

Department of Agriculture | Weights & Measures

1682 Novato Boulevard Suite 150-A

Novato, CA 94947

Phone: 415-499-6700 FAX: 415-499-7543

Email: swise@co.marin.ca.us <<mailto:swise@co.marin.ca.us>>

From: Richard_Kuyper@fws.gov [mailto:Richard_Kuyper@fws.gov]
Sent: Thursday, December 03, 2009 9:33 AM
To: Barry H. Epstein
Cc: cjwhit@comcast.net; gdegghi@h-bgroup.com; Kathy_Brown@fws.gov; Nancy Scolari; Phillip Crader; Shannon_Holbrook@fws.gov; Wise, Scott
Subject: RE: Pine Gulch Creek - Safe Harbor Agreement

Hi Barry,

This agreement looks good. Thanks for all of your work on it. The Marin County Agricultural Commissioners Office can sign a copy of the 12-2-09 version and send it to the FWS. We'll get it signed and have copies sent out. I'm leaving next Tuesday so likely I will be gone by the time the document is signed by the commissioner's office and arrives here in Sacramento, but my boss Kathy Brown will make sure the field office supervisor signs. Go ahead and send the signed copy to Kathy Brown, at the same address on my signature.

Thanks again,

Rick Kuyper
Conservation Partnerships Division
Sacramento Field Office
U.S. Fish and Wildlife Service
2800 Cottage Way, Room W-2605
Sacramento, CA 95825
(916) 414-6562
richard_kuyper@fws.gov

"Barry H. Epstein" <bepstein@fablaw.com>

12/01/2009 05:52 PM

To

<Richard_Kuyper@fws.gov>

cc

<cjwhit@comcast.net>, <nancy@marinrcd.org>, "Phillip Crader"
<PCrader@waterboards.ca.gov>, "Wise, Scott" <SWise@co.marin.ca.us>,
<Shannon_Holbrook@fws.gov>, <Kathy_Brown@fws.gov>, <gdegghi@h-bgroup.com>

Subject

RE: Pine Gulch Creek - Safe Harbor Agreement

Rick-

I have gone over your latest comments and edits with Gary Deghi (biologist from Huffman-Broadway Group) and Carol Whitmire (project

planner). Attached is a revised draft of the SHA with changes to address your concerns.

Specifically, the sections for which you had comments or edits, and the changes we have made in response, are as follows:

SHA, Section 8, sub-section 5 (p. 6) -- you made 1 comment. I have edited the text here to address the concern by specifying the minimum parameters for the extent of fringe vegetation to provide cover for CRLF.

Attachment 3, Section 1.A., Fourth bullet, First sub-bullet -- you made 1 comment.

I have edited the text here to specify that the farmer's draining would not occur until at least September 15 of each year. I have also inserted a comment at the end of your comment.

Attachment 3, Section 1.A., Fourth bullet, Second sub-bullet -- you made 1 edit.

Your edit is not workable. It is not realistic or even possible for the farmers to render the ponds "dry." The most that the farmers can do is take reasonable steps to remove water from the ponds to the extent feasible. This probably will not leave the ponds in a condition where there is literally no observable standing water, but it is the most that can be realistically accomplished.

Note, however, that the purpose of the minimum four-plus week waiting period after draining -- the ponds must be drained by November 15 and the new diversion season does not start until December 15 -- is to allow the ponds to lose more water through evaporation.

Note also that this is not a bullfrog eradication program; it is a bullfrog population control/reduction program. Actively draining as much water as feasible from the ponds and leaving them in that drained condition for at least four weeks was conceived to be a method to control/reduce the predator bullfrog population. This is made express in the Fourth sub-bullet that follows shortly after this text.

Attachment 3, Section 1.A., Fourth bullet, Fourth sub-bullet -- you made 1 comment.

I have deleted the sentence you referenced. I also inserted the word "all" earlier in this section, as I think it improves the understanding.

Attachment 3, Section 1.C.1 -- you made 1 comment.

I am inserting below the text of an email memo from Gary Deghi explaining the wetland acreages and referencing the 2007 Biological Assessment where this topic is discussed in more detail:

Gary wrote: In his comments on the Safe Harbor Agreement, Rick Kuyper has asked for a clarification of the acreages of wetlands that will be present prior to implementation of the project and afterwards. The wetland impacts and mitigation requirements of the project are discussed in the April 2007 Biological Assessment prepared by HBG on pages 26 through 28. A summary of the area and type of wetlands that will be impacted by pond construction and the resulting area and type of wetlands that will be present after project implementation is presented in Table 2 (page 27). Palustrine emergent wetlands that would be subject to Corps jurisdiction (based on the 2003 verified Corps delineation) are present at the location of proposed Ponds 1B, Pond 2 and Pond 3B. The area of Corps jurisdictional wetlands that would be affected by construction of the new ponds would consist of 1.6 acres at Pond 1B, 0.003 acres at Pond 2, and 1.2 acres at Pond 3B. In addition, the existing irrigation ponds themselves would be considered wetlands under the LCP by the County, so the reconfiguration of Pond 3A would result in a net impact to 0.23 acres of the existing pond (0.14 acres of open water habitat and 0.09 acres of wetland fringe). Therefore, the

total wetland impact would be 3.03 acres, consisting of the 0.14 acres of open water in existing Pond 3A and 2.89 acres of palustrine emergent wetland (with nearly all of this resulting from construction at Pond 1B and 3B). The locations of these impacts are shown in Figure 2 of the Biological Assessment. New wetlands would be created within the newly constructed ponds and would consist of open water and a vegetated wetland fringe (about 10 feet in width) around the perimeter of each pond. By our calculations, the five constructed ponds would consist of a total of 5.09 acres of open water habitat and 1.14 acres of vegetated wetland fringe, a total of 6.23 acres of wetlands, as illustrated in Figure 3 of the Biological Assessment report. In our discussions of appropriate mitigation with the Corps, it has been recognized that the wetland mitigation is not totally in kind, which is why the overall mitigation plan contains a riparian restoration element to provide additional habitat values.

Gary Deghi

Vice President/Senior Environmental Scientist
Huffman-Broadway Group, Inc.

828 Mission Avenue
San Rafael, CA 94901

415-925-2000
415-925-2006 fax
650-208-8711 cell

gdegghi@h-bgroup.com <<mailto:gdegghi@h-bgroup.com>>

I would only add that the configuration of this project has not changed since work on this SHA commenced several years ago.

Attachment 3, Section 1.C.1 -- you made 1 comment.

I have edited the text here to specify that additional wetland vegetation seeding would be undertaken if after three years wetland vegetation is not present.

Please let me know if your concerns are addressed such that the SHA can now be finalized. As I mentioned in my previous email, in light of your job change as well as in the interest of moving the Pine Gulch Creek Enhancement Project ahead with our very limited budget remaining from the Coastal Conservancy grant, we would like to try to get this wrapped up.

Thanks.

-Barry

Barry H. Epstein

Fitzgerald Abbott & Beardsley LLP
1221 Broadway, 21st Floor

Oakland, CA 94612

tel 510.451.3300

fax 510.451.1527

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-----Original Message-----

From: Richard_Kuyper@fws.gov [mailto:Richard_Kuyper@fws.gov]
Sent: Monday, November 30, 2009 2:43 PM
To: Barry H. Epstein
Cc: cjwhit@comcast.net; nancy@marinrcd.org; Phillip Crader; Wise, Scott; Shannon_Holbrook@fws.gov; Kathy_Brown@fws.gov
Subject: RE: Pine Gulch Creek - Safe Harbor Agreement

Hi Barry,

Here are some additional comments on the agreement. Thanks - Rick

"Barry H. Epstein" <bepstein@fablaw.com>

11/19/2009 10:29 AM

To

<Richard_Kuyper@fws.gov>

cc

<cjwhit@comcast.net>, <nancy@marinrcd.org>

Subject

RE: Pine Gulch Creek - Safe Harbor Agreement

Rick-

Based on this information, it seems that the best approach is just to specify annual Fall season draining in the SHA, as previously planned,

and to work with SWRCB staff to see if we can get the water rights permit terms modified to be consistent (since the CRLF experts seem to think that the monitoring for bullfrogs is not appropriate or cost-effective). I will relay those comments to Phil Crader and ask for such a modification.

Attached is a revised draft of the SHA. You last commented on the prior draft on May 5, 2008. For convenience, I attach a PDF file that shows that earlier draft with your comments in "balloons" in the right margin. The revised draft attached here should address all of your comments. It is attached as a redline showing only changes that have been made since that earlier version on which you commented in May 2008. Hopefully, this will make your review easier by allowing you to see the new changes made to address your prior comments. I also attach a clean version of this iteration, which can be used as the final if the changes are acceptable.

Please let me know where we stand after you have reviewed these materials. Thank you.

-Barry

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-----Original Message-----

From: Richard Kuyper@fws.gov [mailto:Richard.Kuyper@fws.gov]
Sent: Wednesday, November 18, 2009 10:28 AM
To: Barry H. Epstein
Cc: cjwhit@comcast.net; nancy@martinco.org
Subject: RE: Pine Gulch Creek - Safe Harbor Agreement

Hi Barry,

I checked with Gary Fellers and other frog experts and they all agreed that draining the ponds would be the way to go. There are a lot of issues with surveys and takes someone with a great deal of expertise to

determine if bullfrogs are breeding, distinguishing between CARLF and bullfrog tadpoles etc. I think the surveys would be expensive for the landowners. I spoke with Phil Crader awhile back and let him know that we would require pond draining and he seemed open to that although he did mention at the time that they may require surveys, which I believe he thought was more of a compromise. Hopefully they can change their permit to not require these surveys and have the landowners drain the ponds annually.

Thanks,

Rick Kuyper
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Sacramento Field Office
U.S. Fish and Wildlife Service
2800 Cottage Way, Room W-2605
Sacramento, CA 95825
(916) 414-6562
richard_kuyper@fws.gov

"Barry H. Epstein" <bepstein@fablaw.com>

11/16/2009 03:39 PM

To

<Richard_Kuyper@fws.gov>

cc

<cjwhit@comcast.net>, <nancy@marinrcd.org>

Subject

RE: Pine Gulch Creek - Safe Harbor Agreement

Thanks Rick.

That's precisely why we would prefer not to have to follow the SWRCB's permit terms -- because they do require surveys every year, which as you say may well prove to be an expensive approach, especially if the likelihood of presence is high and the farmers are just going to end up

draining the ponds anyway. The farmers prefer the default being that they will drain the ponds yearly, as we had been discussing with you, rather than being obligated to do the surveys every year.

On the hand, I thought it might be worthwhile for the farmers to at least have the alternative of conducting surveys -- in case they come to believe that bullfrogs are not present. Do you have a particular protocol to propose in that regard, addressing the details you raise such as survey effort, target life stage(s), etc.?

If the SHA has this approach, the SWRCB staff seems willing to change their permit terms to follow suit. I talked to Phil about this last week in general terms but I want to get the SHA finalized so that he will know what requirements we are asking the SWRCB to mimic in their permits.

Thanks.

-Barry

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-----Original Message-----

From: Richard_Kuyper@fws.gov [mailto:Richard_Kuyper@fws.gov]
Sent: Monday, November 16, 2009 3:27 PM
To: Barry H. Epstein
Cc: gjwhit@comcast.net; nancy@marinrcd.org
Subject: Re: Pine Gulch Creek - Safe Harbor Agreement

Hi Barry,

I obtained the SWRCB permits from Phil Crader and will look them over. I would like more detail on the surveys (survey effort, target life stages, etc.). I think it is very unlikely that surveys would occur where bullfrogs were not detected (at least adults), so landowners could end up spending money on surveys and then draining every year anyway. I will discuss your proposal with my boss and the regulatory folks and see

if this is a workable SHA. I'll get back in touch with you when I have some feedback to offer.

Thanks,

Rick Kuyper
Conservation Partnerships Division
Sacramento Field Office
U.S. Fish and Wildlife Service
2800 Cottage Way, Room W-2605
Sacramento, CA 95825
(916) 414-6562
richard_kuyper@fws.gov

"Barry H. Epstein" <bepstein@fablaw.com>

11/16/2009 08:17 AM

To

<Richard_Kuyper@fws.gov>

cc

<cjwhit@comcast.net>, <nancy@marinrcd.org>

Subject

Pine Gulch Creek - Safe Harbor Agreement

Rick-

When we last left off on finalizing the SHA for the Pine Gulch Creek farmers, we had exchanged several drafts and the main remaining question (other than some clean up editing) had to do with management of the ponds for bullfrog predator control. However, before we finalized the SHA, we wanted to get through the State Water Board permit process to see what they were going to say about pond management.

We now have two somewhat conflicting management schemes -- the one we were discussing with you, which was an automatic protocol for draining

of the ponds each Fall to create a drained period that would interrupt the bullfrog lifecycle, and the SWRCB's approach, which is to have a biologist inspect the ponds every Fall and then have a consultation about what to do if bullfrogs are present. Having both approaches is the worst situation for the farmers -- they would end up paying a biologist to inspect every year, having to engage in consultation, and then having to drain anyway.

What we would like to do is propose to both FWS and the SWRCB a combination approach as follows:

- * The default is that the SHA (and SWRCB permit) will require a draining protocol each year.
- * However, in any particular year, a farmer can elect to have a qualified biologist monitor for bullfrog presence (in late Summer) and if monitoring shows no presence then he does not have to drain that year.
- * If three continuous years of such monitoring shows no bullfrog presence, then the farmer does not have to drain or monitor for three years (after which he either has to comply with the default draining protocol or monitor again for three years with no presence of bullfrogs).

If we can nail down the bullfrog management approach in concept, I think we can very quickly finish up the SHA. We would very much like to do so with your involvement since it will take more work to get someone else in the FWS up to speed. We are rapidly running out of the funding from the Coastal Conservancy for our work on this and would like to avoid incurring that extra time and expense.

Please let me know whether something like the above "combination" approach is workable.

-Barry

Barry H. Epstein
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Kuyper/SAC/R1/FWS/DOI] [attachment "FAB-354584-v1-Revised SHA to address
R. Kuyper comments.DOC" deleted by Richard Kuyper/SAC/R1/FWS/DOI]

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From: Phillip Crader
To: Dick-McFadden, Jennifer; Nguyen-Tan, Angela
CC: Herrera, Steve
Date: 12/1/2009 2:13 PM
Subject: Fwd: RE: Pine Gulch Creek - Safe Harbor Agreement
Attachments: Pine Gulch SHA_comments to Barry Epstein 11-30-09.DOC

The Pine Gulch Creek permittees want to know if the bullfrog control term can be modified to be consistent with the Safe Harbor Agreement. Please see the email below for a detailed discussion between Barry and USFWS. In general, they suspect that the Safe Harbor Agreement is going to require annual draining of the ponds in the Fall. To comply with the Safe Harbor Agreement, they plan to withdraw all water from the ponds for irrigation use each year. The Permittee does not want to pay a biologist to survey their empty ponds. We cannot modify the term unless they file change petitions. It is my understanding that they prefer not to file change petitions. I think they may be able to demonstrate compliance with the spirit of the term, but suggest that you check with Steve before advising the Permittee.

Assuming they don't want to file change petitions, I think they need to tell us in writing, for inclusion in each application file, how they plan to comply with the term. Regardless of the condition of the reservoir, they still need to carry out Parts **A** and **C** below. They may be able to address Part **B** by notifying us in writing that in order to comply with the requirements of their Safe Harbor Agreement, they plan to drain the ponds at the seasonally appropriate time each year, and do not plan to survey a dry reservoir. I imagine that the annual report required by Part **C** would indicate the date that the pond was emptied and how long the pond was empty for. Additionally, I would expect photos documenting the complete drainage each year.

They could also file change petitions to have the terms changed to be consistent with the Safe Harbor Agreement. Of course, we would need to see the final Safe Harbor Agreement before making any changes. But I suspect that the Safe Harbor Agreement would constitute ample justification to change the term.

Here is the current permit term:

*To prevent the introduction of invasive species and for the protection of potential habitat of California red-legged frog (*Rana aurora draytonii*), Permittee shall:*

- a) Not stock and shall not allow others to stock fish in any reservoir;*
- b) Cause an aquatic ecologist or biologist, whose qualifications are acceptable to the Deputy Director for Water Rights, to monitor the reservoir(s) authorized under this permit on an annual basis for the presence of fish or other exotic aquatic predators. Within 30 days of discovery of fish or other exotic aquatic predators, Permittee shall consult with the Division of Water Rights and the Department of Fish and Game to develop a control plan acceptable to the Deputy Director for Water Rights. This plan shall include an implementation schedule, and may include draining the reservoir(s) where fish or exotic aquatic predators are found;*
- c) Prepare or cause to be prepared annually a report describing the methodology used to survey the reservoirs for the presence of fish or exotic aquatic predators, the dates when the surveys occurred, and what actions were taken if any were found. These monitoring reports shall be submitted to the Division of Water Rights with all required Reports of Permittee, Reports of Licensee, and whenever requested by the staff of the Division of Water Rights.*

Phil

>>> <Richard.Kuyper@fws.gov> 11/30/2009 2:42 PM >>>
Hi Barry,

Here are some additional comments on the agreement. Thanks - Rick

"Barry H. Epstein" <bepstein@fablaw.com>
11/19/2009 10:29 AM

To
<Richard.Kuyper@fws.gov>
cc
<cjwhit@comcast.net>, <nancy@marinrcd.org>
Subject
RE: Pine Gulch Creek - Safe Harbor Agreement

Rick-

Based on this information, it seems that the best approach is just to specify annual Fall season draining in the SHA, as previously planned, and to work with SWRCB staff to see if we can get the water rights permit terms modified to be consistent (since the CRLF experts seem to think that the monitoring for bullfrogs is not appropriate or cost-effective). I will relay those comments to Phil Crader and ask for such a modification.

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Please let me know where we stand after you have reviewed these materials. Thank you.

-Barry

Barry H. Epstein
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Sent: Wednesday, November 18, 2009 10:28 AM
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To
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Thanks,

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"Barry H. Epstein" <depstein@fablaw.com>
11/16/2009 08:17 AM

To

<Richard.Kuyper@fws.gov>
cc

<cjwhit@comcast.net>, <nancy@marinrca.org>

Subject

Pine Gulch Creek - Safe Harbor Agreement

Rick-

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However, in any particular year, a farmer can elect to have a qualified biologist monitor for bullfrog presence (in late Summer) and if monitoring shows no presence then he does not have to drain that year.

If three continuous years of such monitoring shows no bullfrog presence, then the farmer does not have to drain or monitor for three years (after which he either has to comply with the default draining protocol or monitor again for three years with no presence of bullfrogs).

If we can nail down the bullfrog management approach in concept, I think we can very quickly finish up the SHA. We would very much like to do so with your involvement since it will take more work to get someone else in the FWS up to speed. We are rapidly running out of the funding from the Coastal Conservancy for our work on this and would like to avoid incurring that extra time and expense.

Please let me know whether something like the above "combination" approach is workable.

-Barry

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Jennifer Dick-McFadden - Pine Gulch Creek Enhancement Project

From: "Barry H. Epstein" <bepstein@fablaw.com>
To: ANguyenTan@waterboards.ca.gov; JDick-McFadden@waterboards.ca.gov
Date: 10/30/2009 6:14 PM
Subject: Pine Gulch Creek Enhancement Project
CC: mbowen@scc.ca.gov; nancy@marinrcd.org; cjwhit@comcast.net
Attachments: vcard.gif; fab.gif

Jennifer and Angela-

You probably thought you were done with this project, but two questions have come up regarding the Pine Gulch Creek appropriative Permits and 1707 instream dedication Orders. I was not sure whether to address these to you, or to other Board staff (Vicky? Steve?), so please let me know if they should be directed elsewhere.

1. The appropriative rights Permit Term regarding management of the ponds for CRLF are somewhat inconsistent with what we expect will be required under the Safe Harbor Agreement (SHA) with USFWS. Basically, the Permit Term requires annual monitoring by a biologist for the presence of predator species and then, if predators are found, consultation and development of measures such as draining of the ponds. (As you probably know, draining of the ponds in the Fall is thought to interrupt the breeding cycle of bullfrogs but not to adversely affect CRLF.)

In contrast, the SHA (current draft) simply requires annual draining in the Fall, after the end of the irrigation season but at least four weeks before the diversion season start date of 12/15, in order to provide a one-month period in which the ponds will be largely devoid of water. Since the SHA specifies this measure for bullfrog control, it does not require monitoring for predator species. (The draft SHA also specifically prohibits the knowing introduction of bullfrogs, crayfish, mosquito fish and other fishes.)

Assuming that the SHA is finalized with the above draining and no introduction requirements, the steps of annual biological monitoring followed by consultation about management measures for predators -- as provided in the Permit Term -- would seem to be unnecessary (and it is also going to be quite expensive for the farmers to pay for a special aquatic biologist to monitor each year).

So, the question is whether it might be possible to modify that Permit Term (in all of the permits) to track the USFWS requirements expected in the SHA, and if so, what would be involved in making that change?

2. I think there is a temporal element missing from the 1707 Orders. Specifically, the Orders
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appear to require the dedication of former riparian irrigation diversions to commence now, before the appropriative ponds have been built and filled. Of course, that was never the intention, since the plan is to develop the appropriative ponds and fill them before the farmers stop diverting for irrigation under their riparian rights. (The Recitals to the Order reference the corresponding appropriative rights, but there is nothing explicit I see in the Order that defers its operation until the appropriations are actually made.)

It appears that it will be at least several years before the ponds can be built and begin to operate. As indicated above, the SHA still needs to be finalized. Additionally, the Corps 404 permit and CDFG Streambed Alteration Agreements are being worked on now. However, when all of that is done, we have to find funds to construct the ponds. Various sources are being explored but funding has not yet been secured. We are, however, continuing with some engineering work so that bids can be obtained.

Thus, the 1707 dedications cannot be made right away without cutting off the farmers' summer irrigation supply entirely, which I'm sure was not the intent.

This may not be a matter that requires amendment of the Orders so much as interpretation of them in the context in which they were adopted -- that is, they were tied to the exercise of the appropriative rights. But I thought I should mention this, since the farmers obviously do not want to be in a violation situation. Please let me know whether or how we should address this question.


Thanks for considering the above. I look forward to your response.

-Barry

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FITZGERALD ABBOTT & BEARDSLEY LLP
ATTORNEYS AT LAW

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State Water Resources Control Board



Linda S. Adams
Secretary for
Environmental Protection

Division of Water Rights

1001 I Street, 14th Floor ♦ Sacramento, California 95814 ♦ 916.341.5300
P.O. Box 2000 ♦ Sacramento, California 95812-2000
Fax: 916.341.5400 ♦ www.waterboards.ca.gov/waterrights

Arnold Schwarzenegger
Governor

In Reply Refer To:
JDM:31752

JUL 31 2009

Fresh Run Farm
c/o Barry H. Epstein
Fitzgerald Abbott & Beardsley, LLP
1221 Broadway, 21st Floor
Oakland, CA 94612

Dear Mr. Epstein:

ORDER APPROVING THE PETITION FOR CHANGE PURSUANT TO WATER CODE
SECTION 1707 TO DEDICATE RIPARIAN DIVERSION FOR STATEMENTS 14759, 14760,
and 14764

An Order approving the petition for change pursuant to Water Code section 1707 is enclosed.
Please read the conditions of the Order carefully so that you are familiar with your
responsibilities.

The State Water Resources Control Board requires that you submit triennial Supplemental
Statements of Water Diversion and Use (Supplemental Statements) documenting the amount
of water that has been diverted pursuant to your riparian claim. Please note that in the triennial
Supplemental Statements you will be required to provide a daily record of the quantity
dedicated to the environment, pursuant to the 1707 petition for change. We will mail the forms
to you when the reports are due. Also note the Division of Water Rights will provide online
reporting capability at www.waterboards.ca.gov/waterrights.

Should you have any questions regarding this matter, please contact Jennifer Dick-McFadden
at (916) 322-8568, or by email at jdick-mcfadden@waterboards.ca.gov.

Sincerely,

ORIGINAL SIGNED BY:

Steven Herrera, Manager
Water Rights Permitting Section

Enclosure

cc: Fresh Run Farm
c/o Peter Martinelli
PO Box 478
Bollinas, CA 94924

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California Environmental Protection Agency

SURNAME

AWT 7/31/09

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STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
STATE WATER RESOURCES CONTROL BOARD

DIVISION OF WATER RIGHTS

In the Matter of Riparian Diversion Statements S014759, S014760, and S014764

Fresh Run Farm

ORDER APPROVING INSTREAM FLOW DEDICATION

SOURCE: Pine Gulch Creek tributary to Bolinas Lagoon thence Pacific Ocean

COUNTY: Marin

WHEREAS:

1. Fresh Run Farm (Petitioner) filed a petition for change pursuant to Water Code section 1707 with the State Water Resources Control Board (State Water Board), Division of Water Rights (Division) on March 12, 2009. The petition for change was filed to change the purpose and place of use under Statements of Water Diversion and Use 14759, 14760, and 14764 for the enhancement of fish and wildlife resources.
2. The Petitioner has requested that downstream portions of the Pine Gulch Creek watercourse be added to the description of the place of use, and fish and wildlife enhancement be added as a purpose of use under their riparian claims.
3. Pursuant to the petition for change, Petitioner intends to forego diversions from Pine Gulch Creek during the period of July 1 to December 15 of each year for irrigation uses. Riparian use for domestic and industrial purposes will continue from January 1 to December 31 of each year. Pursuant to the petition for change, water that would otherwise have been diverted from Pine Gulch Creek for irrigation will remain instream and be dedicated to fishery and habitat enhancement between the Petitioner's points of diversion and Bolinas Lagoon. In exchange for the water being dedicated to Pine Gulch Creek, Petitioner filed Application 31752 on March 19, 2009 to appropriate winter flows by permit.
4. The State Water Board, Division of Water Rights finds that, with the conditions included in this order, the change will neither increase the amount of water that the Petitioner is entitled to use nor unreasonably affect any legal user of water. The State Water Board further finds that the change is in the public interest and the change will not adversely affect fish, wildlife, instream beneficial uses, or public trust resources. Accordingly, the petition for change is approved subject to the conditions imposed herein.

SURNAME

AM 7/31/09

PGC 7/31/09

7/31/09

VAW 7/31/09

NOW, THEREFORE, IT IS ORDERED THAT the instream flow dedication pursuant to Water Code section 1707 petition for change is approved subject to the following conditions:

1. From the period of July 1 to December 15 of each year, Petitioner shall dedicate to instream flows, all riparian water previously diverted for the purpose of irrigation under Statements of Water Diversion and Use 14759, 14760, and 14764. During this period, riparian water may be diverted for domestic and industrial purposes only.
2. The water dedicated to the environment pursuant to Water Code section 1707 shall be from point of diversion 4 under Application 31752 located at California Coordinate System of 1983, Zone 2, North 2,167,962 feet and East 5,925,476 feet, being within NE¼ of SE¼ of projected Section 14, T1N, R8W, MDB&M (upstream limit) to the confluence of Pine Gulch Creek and Bolinas Lagoon (downstream limit), and point of diversion 5 under Application 31752 located at California Coordinate System of 1983, Zone 2, North 2,169,207 feet and East 5,924,856 feet, being within SW¼ of NE¼ of projected Section 14, T1N, R8W, MDB&M (upstream limit) to the confluence of Pine Gulch Creek and Bolinas Lagoon (downstream limit).
3. The Petitioner shall report to the State Water Board on the triennial Supplemental Statements of Water Diversion and Use, a daily record of the quantity dedicated to the environment, pursuant to the 1707 petition. No credit shall be given for the 1707 petition flows unless the required documentation is timely submitted.
4. The State Water Board may supervise diversion and use of water under this order for the protection of lawful users of water and instream beneficial uses and for compliance with the conditions. The Petitioner shall allow representatives of the State Water Board and other parties, as may be authorized from time to time by the State Water Board, reasonable access to project works to determine compliance with the terms of this order.

STATE WATER RESOURCES CONTROL BOARD

ORIGINAL SIGNED BY:

Victoria A. Whitney
Deputy Director for Water Rights

JUL 31 2009

Dated:

ANguyenTan:ds 7/29/2009

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STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
STATE WATER RESOURCES CONTROL BOARD

DIVISION OF WATER RIGHTS

In the Matter of Riparian Diversion Statements S014759, S014760, and S014764
Fresh Run Farm

ORDER APPROVING INSTREAM FLOW DEDICATION

SOURCE: Pine Gulch Creek tributary to Bolinas Lagoon thence Pacific Ocean

COUNTY: Marin

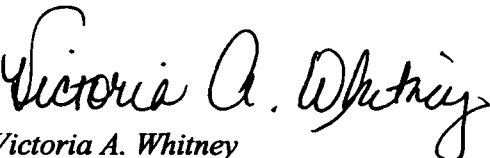
WHEREAS:

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STATE WATER RESOURCES CONTROL BOARD


Victoria A. Whitney
Deputy Director for Water Rights

Dated: JUL 31 2009

ANguyenTan:ds 7/29/2009

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STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
STATE WATER RESOURCES CONTROL BOARD

DIVISION OF WATER RIGHTS

In the Matter of Riparian Diversion Statements S014759, S014760, and S014764
Fresh Run Farm

ORDER APPROVING INSTREAM FLOW DEDICATION

SOURCE: Pine Gulch Creek tributary to Bolinas Lagoon thence Pacific Ocean

COUNTY: Marin

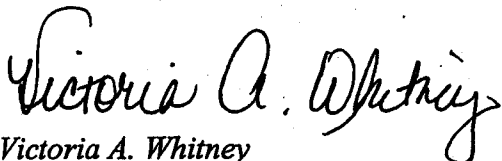
WHEREAS:

1. Fresh Run Farm (Petitioner) filed a petition for change pursuant to Water Code section 1707 with the State Water Resources Control Board (State Water Board), Division of Water Rights (Division) on March 12, 2009. The petition for change was filed to change the purpose and place of use under Statements of Water Diversion and Use 14759, 14760, and 14764 for the enhancement of fish and wildlife resources.
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4. The State Water Board, Division of Water Rights finds that, with the conditions included in this order, the change will neither increase the amount of water that the Petitioner is entitled to use nor unreasonably affect any legal user of water. The State Water Board further finds that the change is in the public interest and the change will not adversely affect fish, wildlife, instream beneficial uses, or public trust resources. Accordingly, the petition for change is approved subject to the conditions imposed herein.

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STATE WATER RESOURCES CONTROL BOARD



Victoria A. Whitney
Deputy Director for Water Rights

Dated: **JUL 31 2009**

ANguyenTan:ds 7/29/2009

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Jennifer Dick-McFadden - Pine Gulch Creek outside areas of continued riparian use

From: "Barry H. Epstein" <bepstein@fablaw.com>
To: <ANGuyenTan@waterboards.ca.gov>, "Jennifer Dick-McFadden" <JDick-McFadden@waterboards.ca.gov>
Date: 6/16/2009 10:59 AM
Subject: Pine Gulch Creek outside areas of continued riparian use
CC: <warrenweber@earthlink.net>, "PETER MARTINELLI" <peter.martinelli@sbcglobal.net>, <ddierks@sonic.net>, "Michael Bowen" <mbowen@scc.ca.gov>, "Nancy Scolari" <nancy@marinrcd.org>, "Erickson" <erickson@ap.net>, <cjwhit@comcast.net>
Attachments: vcard.gif; fab.gif

Angela and Jennifer-

The last question you posed during our recent phone conversation (not answered in my email of June 15) was as to the outside areas on the properties that would be the subject of continued riparian use -- e.g., greenhouse irrigation, which Brannon's report considered to be part of "residential" use, landscape areas, etc. -- which areas do not include the commercial irrigated ag production areas of the three farms (Star Route Farms, Fresh Run Farm and Paradise Valley Farm).

The following is the information in response to that question as to each of the farms:

Paradise Valley Farm (New Land Fund/Dennis Dierks): Area of greenhouse, landscape and similar outdoor use that will continue under year-round riparian diversion is 1/2-acre or less.

Star Route Farms (Weber): Area of greenhouse, landscape and similar outdoor use that will continue under year-round diversion is 1/2-acre or less on the North parcel and 1/2-acre or less on the South parcel. (Recall that each SRF parcel is separately treated in the pending Applications and 1707 Petitions.)

Fresh Run Farm (Martinelli): Area of outdoor use that will continue under year-round diversion by Fresh Run Farm/Peter Martinelli via PODs 4 and 5 is 1/2-acre or less.

However, there are two other existing diversions (with small pumps) associated with the two other Martinelli family houses on the Martinelli family property (where the Fresh Run Farm is located). These two diversions provide water for interior domestic purposes, as well as landscape, animals and a 1-acre fruit production area that supports a jam business operated by Peter's brother's wife. These small diversions are not part of the Pine Gulch Creek Enhancement Project and are expected to continue under riparian use without change.

Message

**


Please let me know if you need any further information in this regard. With the above, I think I have responded to all of the pending information requests. Thank you.

Barry

Barry H. Epstein
Fitzgerald Abbott & Beardsley LLP
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Oakland, CA 94612
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From: "Barry H. Epstein" <bepstein@fablaw.com>
To: <ANGuyenTan@waterboards.ca.gov>, "Jennifer Dick-McFadden" <JDick-McFadde...
CC: <warrenweber@earthlink.net>, "PETER MARTINELLI" <peter.martinelli@sbcglo...
Date: 6/15/2009 12:30 PM
Subject: Pine Gulch Creek project
Attachments: vcard.gif; fab.gif

Angela and Jennifer-

Per our phone conversation on June 10, I write to confirm the following:

1. For all Applications, in Section B (1), item (k) "Fish and Wildlife Preservation and/or Enhancement" may be removed as a justification for the amount of water requested. As we discussed, although the overall purpose of the project is intended to provide fish enhancement, the appropriated water is not being used for that purpose. (Rather, it is the dedication of the riparian irrigation diversions that will accomplish the primary enhancement by reducing dry season withdrawals from the Creek.)
2. For A.031752 (Martinelli/Fresh Run Farm), with the removal of Old Green Pond from the Application, the total appropriation shown in Section A (4) should be reduced to 20.5 AFA.
3. For all Petitions, in addition to continuing year-round diversions for domestic purposes, year-round diversions for the industrial uses ancillary to agricultural operations, as previously noted (such as wash water, greenhouse uses, foliar feeding, etc.), will continue. Estimates of the quantities of these based on past activities previously were provided.

The Petitions currently each state, on page 1 under "Give Reason for Proposed Change," the following: "... (Domestic riparian diversions would continue on a year round basis....)" The same text also appears in each of the Environmental Information for Petitions forms, section 1. In light of the above, this text should be corrected to read as follows: "... (Domestic riparian diversions, and riparian diversions for industrial uses ancillary to agricultural operations, such as wash water, greenhouse uses and foliar feeding, would continue on a year round basis....)" The added text is in bold and underscored above for clarity. Please let me know if that change will address your concern.

4. For A.031752 (Martinelli/Fresh Run Farm), I previously indicated that water to be stored in the small Hilltop Pond might be diverted directly into that pond or might be first diverted into the New Green Pond for temporary holding and then pumped up to Hilltop Pond at a slower rate. POD 5 will be plumbed to directly divert into the Hilltop Pond only. However, if water is first pumped into the New Green Pond and then up to Hilltop Pond, that water would be diverted from the Creek via POD 4. Regardless of which POD is used, the total diverted to storage in Hilltop Pond would remain at 3.5 AF per diversion season and the total diverted to storage in New Green Pond would be 17 AF per diversion season.

Please let me know if the above answers your pending questions. Thank you.

-Barry

Barry H. Epstein
Fitzgerald Abbott & Beardsley LLP
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<<http://www.fablaw.com/utility/vcard.html?id=104>>

<<http://www.fablaw.com/>>

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CONTACT REPORT

DIVISION OF WATER RIGHTS

STATE WATER RESOURCES CONTROL BOARD

Division Personnel: Angela Nguyen-Tan
Applications: 31749, 31750, 31751, and 31752 – Pine Gulch Creek
Individual(s)/Agency Contacted: Barry H. Epstein
Number: 510-451-3300 **Date:** June 02, 2009 **Time:** 2:00 pm

10

Conversation Description:

June 02, 2009:

Jennifer Dick-Mc Fadden and I contacted Barry by phone. We discussed several issues regarding the 1707 petitions for change and the applications filed for the Pine Gulch Creek Watershed Enhancement Project. A summary of the conversation has been provided below.

- **Purpose of Use:** All four applications have Fish and Wildlife Enhancement as a purpose of use. We asked him if he wished to remove it from the application. He agreed that it was not a purpose of use for the appropriated water. He will request to remove it from the applications as a purpose of use.
- **31752 Fresh Run Farm:** Green Pond had originally been included on the application, and with it, the uses of fire protection and recreation. The applicants have since requested that Green Pond be removed from the application; however fire protection and recreation were still listed as purposes of use. He requested that we leave these uses on the application. Also, due to the removal of Green Pond from the application, we asked him if the amount requested should be decreased to 20.5 afa from 23.5 afa. He agreed.
- **POD 5 Pipeline to New Green Pond:** Barry had proposed that the applicants be allowed to pump water from POD 5 directly to New Green Pond in addition to Hill top Pond. We asked him if the pipeline currently exists and if not, if the construction of the pipeline was covered in the environmental document. He said that he didn't know and that he would check on it.
- **31749 and 31750 Star Route Farms Special Purpose Removeable Pump:** We asked for a more detailed explanation on the use of the moveable pump that Barry described in his June 8, 2009 e-mail. He explained that in very dry years, as analyzed in the WAA, the farmers may only be able to pump 13 days of the diversion season, in order to meet the 25cfs minimum bypass in Pine Gulch Creek. The pump would be used in these very dry years to allow the farmer to divert higher rates (up to the max) on those few days that the creek is running above 25 cfs. The pump would not be utilized in a normal or above normal year, but rather in "worst-case scenarios" when the farmer would otherwise not be able to pump enough water to fill the reservoirs.

- **1707 Petitions for Change:** We asked Barry if he would like to add Industrial use to the Petitions for Change. He will confirm with the farmers.
- We also asked whether each farm's greenhouse operations or other landscaping was under ½ acre. He said that he thinks that they are, but will confirm with the farmers.

Decisions: Fire Protection and Recreation will remain as Purposes of Use on Application 31752.

Action Items:

He will send an e-mail requesting the following changes: (1) Removal of fish and wildlife enhancement as purposes of use for all four applications, (2) Decrease the amount on 31752 to 20.5 afa.

Barry will get confirmation on the status of the pipeline connecting POD 5 and New Green Pond for 31752. He will contact the farmers about adding industrial use to all four Petitions for Change, and to get confirmation on the size of all four farmers' greenhouse operations and domestic landscaping to be irrigated under domestic use.

Jennifer Dick-McFadden - Pine Gulch Creek Applications and 1707 Petitions

From: "Barry H. Epstein" <bepstein@fablaw.com>
To: "Jennifer Dick-McFadden" <JDick-McFadden@waterboards.ca.gov>, "Phillip Crader" <PCrader@waterboards.ca.gov>, "Angela Nguyen-Tan" <ANguyenTan@waterboards.ca.gov>
Date: 6/8/2009 12:55 PM
Subject: Pine Gulch Creek Applications and 1707 Petitions
CC: "Warren Weber" <warrenweber@earthlink.net>, "PETER MARTINELLI" <peter.martinelli@sbcglobal.net>, <ddierks@sonic.net>, <cjwhit@comcast.net>, <erickson@ap.net>, <Brannon_Ketcham@nps.gov>, "Nancy Scolari" <nancy@marinrcd.org>, <mbowen@scc.ca.gov>
Attachments: vcard.gif; fab.gif; FAB-337849-v2-Current riparian diversions by type.XLS

Jennifer, Phil and Angela-

Here are responses to the various information requests you recently posed:

1. Re the missing Statements of Water Diversion and Use from Martinelli/Fresh Run Farms and Dierks/New Land Fund/Paradise Valley Farm: I have passed these on and asked these two farmers to check their records for information needed to complete these statements.
2. Re the 1707 Petitions not specifying the quantity of the water being dedicated: The quantity of water foregone under the 1707 is not going to be the same every year because the irrigation needs that would be met in the future by riparian diversions, but for the 1707 dedications, differ from year to year. Consistent with this, the quantity withdrawn after July 1 for irrigation in the recent past years will not have been the same every year. Brannon Ketcham's WAA/CFII report contains what I think are average numbers of past irrigation diversions. (See Tables 5.1, 5.2 and 5.3, pp. 24, 27 and 29.) Using that data might be the best approach.
3. Brannon's WAA/CFII report and the project description characterize water used for washing, green house irrigation, foliar teas and similar small commercial uses ancillary to the ag operations as part of the "residential" (i.e., domestic) riparian diversions, although those types of use are actually commercial. (He did it that way in order to isolate the riparian irrigation diversions that will be discontinued under the 1707 Petitions.) Riparian diversions for these ancillary commercial uses will continue, along with riparian diversions for domestic purposes, after the July 1 cutoff of riparian diversions for irrigation purposes. I have collected information from the three farmers to separate these two continuing types of diversion -- commercial non-irrigation and domestic. Essentially I have expanded Brannon's Tables 5.1 - 5.4 in his WAA/CFII report to breakdown his "residential" column into two columns. See attached Excel spreadsheet.
4. I can confirm that the Old Green Pond is being removed from the Application for Fresh Run Farm (A.031752).
5. The maximum rate of pumping for water being transferred from Pond 1B (New Green Pond) to Pond 1A (Hilltop Pond) at Fresh Run Farms is planned to be 10 gpm. (Peter Martinelli is planning to use a solar-powered pump for this purpose.)
6. The pumping rates stated in the Applications for the diversions from Pine Gulch Creek are not correct as maximums. The Applications state the maximum capacity of the existing pumps. However, in order to fill the ponds, particularly in drier years, the farmers will have to use higher capacity pumps, as indicated in Brannon's WAA/CFII report. Therefore, per his report, the maximum pumping rates should be set as follows:

Star Route Farms (N+S combined)	460 gpm
New Land Fund	100 gpm

Message

Fresh Run Farms

360 gpm

Note that for SRF, the two Applications will need to cross-reference to a maximum total rate of 460 gpm. That will be necessary because, in drier years, it is possible that the farmer may use a single special purpose moveable pump rather than filling both ponds at the same time. Setting the combined pumping rate in this manner gives maximum flexibility as to the physical infrastructure he can use.

For similar reasons, Fresh Run Farms may find it more practical, especially in drier years, to only divert from Pine Gulch Creek into the New Green Pond (1B), which is much larger, and then to transfer water by pump from there into the Hilltop Pond (1A) at the lower rate in order to fill that pond during the diversion season. That may not be quite the same thing as making the Hilltop Pond a 'ORD, but if something is needed in order to allow the pumping from the creek into, and temporary storage in, New Green Pond on the way to Hilltop Pond storage during the diversion season, that adjustment should be made.

I understand from my phone conversation with Angela, that the correction of the pumping rates can be made as an administrative change to the Applications.

You want to clarify the nomenclature as between points of diversion, points of redirection and places of storage. I think what you are planning makes sense, but I am going to try to reiterate the situation to see if this helps avoid confusion and then allows for proper permitting treatment:

SRF New Green Pond (1B)

- will be filled from the small watercourse upstream of the pond and also by diversion from Pine Gulch Creek (PGC)
- will be a place of storage for water from both of these watercourses
- water will be diverted to storage here from a diversion on PGC (via pumping) and from the upstream watercourse
- as noted above, water diverted from PGC and destined for storage in the Hilltop pond (1A) may be first pumped into this pond and then up to the Hilltop pond during the diversion season

SRF Hilltop Pond (1A)

- has no watercourse above it, but will capture sheetflow
- will be a place of storage
- water diverted to storage here from a diversion on PGC may at times pass via the New Green Pond

JLF Pond

- has no watercourse above it, but will capture sheetflow
- will be a place of storage
- water will be diverted to storage here from a diversion on PGC

SRF-North Pond

- has no watercourse above it, but will capture sheetflow
- will be a place of storage
- water will be diverted to storage here from a diversion on PGC

SRF-South Pond


- will be filled from the small watercourse upstream of the pond and also from a diversion from Pine Gulch Creek (PGC)
- will be a place of storage for water from both of these watercourses
- water will be diverted to storage here from a diversion on PGC (via pumping) and from the upstream watercourse

I think the above (and attached) respond to all of the staff's outstanding questions. Please let me know if you have any follow-up questions or need any further information. Sorry that it took a couple of weeks to be able to provide these responses. Thanks.

Barry
 Barry H. Epstein
 Fitzgerald Abbott & Beardsley LLP
 1221 Broadway, 21st Floor
 Oakland, CA 94612
 Tel 510.451.3300
 Fax 510.451.1527

bepstein@fablaw.com

www.fablaw.com

 v-card

Fresh Run Farms (Martinelli)

	Irrigation (AF/month)	Commercial non- irrigation (AF/month)	Domestic (AF/month)
Dec	0.2	0.03	0.06
Jan	0.2	0.03	0.06
Feb	0.2	0.06	0.06
Mar	0.5	0.06	0.06
Apr	2	0.29	0.07
May	3	0.29	0.14
Jun	5	0.29	0.27
Jul	5	0.29	0.27
Aug	5	0.29	0.27
Sep	5	0.29	0.27
Oct	2.5	0.26	0.21
Nov	0.5	0.03	0.1
	29.1	2.21	1.84

Paradise Valley Farm (Dierks / New Land Fund)

	Irrigation (AF/month)	Commercial non- irrigation (AF/month)	Domestic (AF/month)
Dec	0	0	0.01
Jan	0	0	0.01
Feb	0	0.01	0.01
Mar	0	0.05	0.02
Apr	0.16	0.06	0.03
May	0.93	0.1	0.03
Jun	1.5	0.15	0.03
Jul	1.58	0.15	0.03
Aug	1.43	0.15	0.03
Sep	1.26	0.15	0.03
Oct	0.58	0.06	0.02
Nov	0.1	0.06	0.01
	7.54	0.94	0.26

Star Route Farms (Weber)

	Irrigation (AF/month)	Commercial non- irrigation (AF/month)	Domestic (AF/month)
Dec	0.5	0.16	0.12
Jan	0.5	0.16	0.12
Feb	1	0.16	0.12
Mar	2.5	0.16	0.12
Apr	3	0.16	0.12
May	5	0.16	0.12
Jun	7	0.16	0.12
Jul	10	0.16	0.12
Aug	10	0.16	0.12
Sep	8	0.16	0.12
Oct	5	0.16	0.12
Nov	1	0.16	0.12
	53.5	1.92	1.44

CONTACT REPORT

DIVISION OF WATER RIGHTS

STATE WATER RESOURCES CONTROL BOARD

Division Personnel: Angela Nguyen-Tan

Applications: 31749, 31750, 31751, and 31752 – Pine Gulch Creek

Individual(s)/Agency Contacted: Barry H. Epstein

Number: 510-451-3300 **Date:** June 2, 2009 **Time:** 2:30

Conversation Description:

June 2, 2009:

Barry contacted me regarding the messages that Jennifer Dick-McFadden had left him on May 15 and 22, 2009. He informed me that he had been restricted from working on the project due to lack of funds by the Coastal Conservancy. He reported that he recently had been authorized to perform 10 hours of work. We discussed several issues regarding the 1707 petitions for change and the applications filed for the Pine Gulch Creek Watershed Enhancement Project. A summary of the conversation has been provided below.

- **Diversion Rates:** The Initial Study for the project indicates that the diversion rates are: (1) 1.0 cubic feet per second (cfs) for A031749 and A031750; (2) 0.22 cfs for A031751; and (3) 0.8 cfs for A031752. The applications indicate diversion rates of: (1) 0.19 cfs for A031749; (2) 0.27 cfs for A031750; (3) 0.067 cfs for A031751; and (4) 0.14 cfs and 0.05 cfs for A031752. I asked Barry if he had received clarification from the applicants on what the diversion rates would be. He said that Brannon Ketchum (National Park Service) and Lee Erickson (project engineer) were working on a detailed analysis of the watershed to determine if the higher pumping rates would indeed be adequate for the project. Barry indicated that he should have an answer in a couple of days. He said that he would contact us when he had heard from Brannon or Lee.
- **1707 Volume of Dedication:** Barry and I discussed the amount of water to be dedicated by the 1707 petitions for change. He asked the Division for guidance on calculating the amount of water using historical pumping records. I said that I would check on this and contact him.
- **Definition of Domestic Use:** Barry acknowledged that the California Code of Regulations, section 660 does not support "domestic use" as defined by the Initial study and the Water Availability Analysis. He said that he will talk to the applicants about separating these uses on the application.
- **Green Pond:** Barry confirmed that POD E should be removed from the application. He agreed to confirm this request when he sends us the pumping rates in a few days.
- **Pumping rate from New Green Pond to Hilltop Pond:** The rate of diversion from POD 1B (New Green Pond) to 1A (Hilltop Pond) was not indicated on

Application 31752. Barry indicated he would contact the project engineer and let us know.

Decision(s):

Action Items: Check with JDM, PGC and SRH regarding 1707 dedication amounts.

Jennifer Dick-McFadden - Pine Gulch Creek

From: Jennifer Dick-McFadden
To: bepstein@fablaw.com
Date: 5/20/2009 2:03 PM
Subject: Pine Gulch Creek
Attachments: Supplemental Statements.pdf

Barry,

I have attached the supplemental statements for New Land Fund and Fresh Run Farms. Please complete the forms and mail them to the Division to my attention.

When amending the petitions for change to include the amount of water to be dedicated to instream flows, please indicate the maximum amount to be dedicated. Please note that section 4.3.3 of the water availability analysis indicates that summer commercial riparian diversions to be dedicated to instream flows is approximately 70 acre-feet. Can you please confirm this amount? Please contact me if you have any additional questions. Thank you.

Jennifer Dick-McFadden
Environmental Scientist
State Water Resources Control Board
Division of Water Rights
916-322-8568
jdick-mcfadden@waterboards.ca.gov

CONTACT REPORT

DIVISION OF WATER RIGHTS

STATE WATER RESOURCES CONTROL BOARD

Division Personnel: Jennifer Dick-McFadden

Applications: 31749, 31750, 31751, and 31752 – Pine Gulch Creek

Individual(s)/Agency Contacted: Barry H. Epstein

Number: 510-451-3300

Date:

Time:

Conversation Description:

May 15, 2009:

I contacted Barry regarding the 1707 petitions for change and the applications filed for the Pine Gulch Creek Watershed Enhancement Project. A summary of the conversation has been provided below.

- The 1707 petitions for change indicate that commercial water diverted pursuant to Statements of Water Diversion and Use (Statements) 8209, 14981, 14759, 14760, and 14764 will be dedicated to instream flows. However, the petitions for change did not indicate the amount of water to be dedicated. Barry indicated that the amount of water used by the Applicants every year varies slightly. He inquired as to whether he should use the average amount of water used to calculate the amount to be dedicated. I advised Barry that I would contact him after discussing the issue with a supervisor.
- The 1707 petitions for change indicate that domestic riparian diversions would continue on a year round basis. The Initial Study prepared for the project indicates that domestic use includes small gardens, domestic livestock, residential use, vegetable wash water, and greenhouse operations. According to the California Code of Regulations section 660 domestic use includes the use of water in homes, incidental watering of domestic stock, and the irrigation of not to exceed one-half acre of lawn or gardens. Barry indicated that the project has defined domestic differently and will continue those uses as defined by the Initial Study.
- During review of the Statements submitted to the Division it was noted that Supplemental Statements for S014764, S014760, S014759, and S014981 are overdue. I indicated that I would email him copies of the supplemental statements. Barry advised me that he would forward them to the Applicants and request that they complete and return the forms.
- The Initial Study for the project indicates that the diversion rates are: (1) 1.0 cubic feet per second (cfs) for A031749 and A031750; (2) 0.22 cfs for A031751; and (3) 0.8 cfs for A031752. The applications indicate diversion rates of: (1) 0.19 cfs for A031749; (2) 0.27 cfs for A031750; (3) 0.067 cfs for A031751; and (4) 0.14 cfs and 0.05 cfs for A031752. I asked Barry to provide the correct diversion rates for the project. He stated he would discuss the issue with the Applicants and contact me with the correct rates.

- During the March 20, 2009 phone call and April 21, 2009 site visit it was mentioned that point of diversion (POD) E (green pond) associated with A031752 may be removed from the application. I inquired as to whether a decision has been made. Barry confirmed that POD E should be removed from the application. I asked him to send me a confirmation email.
- The rate of diversion from POD 1B (New Green Pond) to 1A (Hilltop Pond) was not indicated on Application 31752. Barry indicated he would contact me once the rate was determined.
- I advised Barry that the Division was making some administrative corrections to the description of the reservoirs. I advised him that points of rediversion (PORD) 3B (A031749), 2 (A031751), and 1A (A031752) will be described as places of storage instead of PORDs as the reservoirs are located offstream. I advised him that the applications will be amended accordingly.

May 22, 2009:

I contacted Barry regarding our May 15 conversation. I asked him if he had received a response from the Applicants. He indicated that he had not heard back from them as of yet but would place a call to see if any decisions have been made.

Decision(s): I discussed the dedication amount with KDM per Barry's request. She indicated that the maximum amount of water used should be indicated on the 1707 petitions for change as a dedication to instream flows.

Action Items: Amend applications accordingly



Linda S. Adams
Secretary for
Environmental Protection

State Water Resources Control Board

Division of Water Rights

1001 I Street, 14th Floor ♦ Sacramento, California 95814 ♦ 916.341.5300
Mailing Address: P.O. Box 2000 ♦ Sacramento, California 95812-2000
FAX: 916.341.5400 ♦ www.waterrights.ca.gov



Arnold Schwarzenegger
Governor

POSTMASTER: **MAR 24 2009**
20 Brighton Avenue
Bollinas, CA 94924

NOTICE TO POSTMASTER

APPLICATIONS 31749, 31750, 31751 AND 31752

The enclosed notice is of interest to people of your community.

We would appreciate your posting it in a prominent place in your post office.

VICTORIA A. WHITNEY
DIVISION CHIEF

Enclosure

California Environmental Protection Agency

SURNAME

JDM

Amf Recycled Paper

1/2 2-74 NA



State Water Resources Control Board



Linda S. Adams
Secretary for
Environmental Protection

Division of Water Rights
1001 I Street, 14th Floor • Sacramento, California 95814 • (916) 341-5300
Mailing Address: P.O. Box 2000 • Sacramento, California • 95812-2000
FAX (916) 341-5400 • Web Site Address: <http://www.swrcb.ca.gov>
Division of Water Rights: <http://www.waterrights.ca.gov>

Arnold Schwarzenegger
Governor

CERTIFIED MAIL

MAR 24 2009

INSTRUCTIONS TO APPLICANT

APPLICATION 31750

Your application has been determined to be complete in accordance with section 65943, division 1, title 7 of the California Government Code. Please note that you are not authorized to divert or develop the use of water covered by this application until a permit has been issued for the project.

The California Water Code requires that all water right applications be noticed to the public. To accomplish this, you must do the following:

1. Post the enclosed application notice as soon as possible in two conspicuous locations near your project until the close of the protest period. The notices must be posted in a location where the public can easily read them. **THESE NOTICES MUST BE POSTED WITHIN 20 DAYS OF THE DATE OF THE NOTICE.**
2. The person who posts the notice must complete the attached form entitled "Statement of Proof of Posting". **THE PROOF OF POSTING MUST BE FILED WITH THIS OFFICE WITHIN 40 DAYS OF THE DATE OF NOTICE.** Do not detach the copy of the notice from the statement of posting.

The State Water Resources Control Board may cancel your application if you fail to mail a copy of the Statement of Proof of Posting prior to the required date.

Water right notices are designed for the mutual protection of the applicant and other parties claiming prior rights. Although vested rights to the use of water from the source from which an appropriation is sought cannot be lost, prejudiced, or impaired by failure to protest an application, known claimants to prior rights have been given this notice so that they may protest if they believe the proposed appropriation(s) will result in injury to them.

All parties filing a protest against this application should furnish you, as well as this office, a copy of their protest. We will notify you when protests are received and provide instructions for responding to them.

VICTORIA A. WHITNEY
DIVISION CHIEF

Enclosures (4 copies of notice, Statement of Proof of Posting)

California Environmental Protection Agency

SURNAME

[Handwritten signature]

Recycled Paper

[Handwritten signature] 3/24/09

**STATEMENT OF POSTING NOTICE
APPLICATION 31750**

says:

(Name of person who posted copies of notice)

(Insert here "that he is the applicant" or "that acting on behalf of the applicant")

in the matter of Application 31750 before the State Water Resources Control Board, State of California,

_____ on the _____ day of _____, 20____, post
("and did" or "he did")

two copies of notice of said application identical to the attached copy.

That one copy of said notice was posted at: _____

(Here describe how and where posted as accurately as possible)

and the other copy of said notice was posted at: _____

That each of the copies of the notice was posted in a conspicuous place in the area affected by the proposed appropriation.

I declare under penalty of perjury that the foregoing is true and correct. Signed on the
_____ day of

_____, 20____, at _____, California.

(Signature of person who posted copies of notice)

DO NOT DETACH APPLICATION NOTICE FROM THIS FORM



Linda S. Adams
Secretary for
Environmental Protection

Division of Water Rights
1001 I Street, 14th Floor ♦ Sacramento, California 95814 ♦ 916.341.5300
P.O. Box 2000 ♦ Sacramento, California 95812-2000
Fax: 916.341.5400 ♦ www.waterrights.ca.gov



Arnold Schwarzenegger
Governor

**NOTICE OF APPLICATIONS 31749, 31750, 31751, AND 31752 AND PETITIONS FOR
CHANGE IN PURPOSE OF USE TO DEDICATE WATER TO ENHANCE INSTREAM
FISH HABITAT (WATER CODE SECTION 1707)**

COUNTY: Marin

STREAM SYSTEM: Pine Gulch Creek

Star Route Farms North Parcel, Star Route Farms South Parcel, New Land Fund, and Fresh Run Farm (collectively known as Pine Gulch Creek Watershed Enhancement Project) filed applications to appropriate water by permit. This enhancement project is a voluntary and cooperative effort of the participating farms. The proposed project is intended to enhance summer flows in Pine Gulch Creek by utilizing wet season appropriative diversions in lieu of dry season riparian diversion. Limited riparian diversion in the spring (April through June), and appropriative storage of winter diversions would accommodate the continuing agricultural water needs of the farms. The commercial riparian diversion between July 1 and December 15 is proposed to be dedicated to instream flow for the benefit of coho salmon and steelhead trout pursuant to California Water Code section 1707. Existing riparian rights for domestic purposes would not be modified as part of this project. This enhancement project has been developed in consultation with the Department of Fish and Game, National Marine Fisheries Service, and the State Water Resources Control Board. Any correspondence directed to the Applicants should be addressed to Fitzgerald, Abbott & Beardsley, LLP, c/o Barry H. Epstein, 1221 Broadway, 21st Floor, Oakland, CA 94612.

Summary of Application 31749

Applicant:	Star Route Farms North Parcel
Source:	Pine Gulch Creek tributary to Bolinas Lagoon thence Pacific Ocean
Point of Diversion (POD):	POD 2 to offstream storage within SE¼ of NW¼; point of rediversion (PORD) 3B – North Pond within NE¼ of NW¼, both within projected Section 24, T1N, R8W, MDB&M
Amount:	9.4 acre-feet per annum (afa) to storage
Season:	December 15 of each year to March 31 of the succeeding year
Purpose of Use:	Irrigation
Place of Use:	13 acres with the N½ of NW¼, and 5.4 acres within S½ of NW¼, all within projected Section 24, T1N, R8W, MDB&M, for a total of 18.4 acres
Petition for Change	Riparian water diverted for irrigation pursuant to Statement 8209 is proposed to be dedicated to instream flow for the benefit of fish and wildlife resources from July 1 to December 15 of each year. Domestic riparian diversions would continue to occur year round.

California Environmental Protection Agency

SURNAME	ANT 3-24-09	JOHN S. STOR	REC 3-24-09
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Summary of Application 31750

Applicant	Star Route Farms South Parcel
Source:	Unnamed Stream tributary to Pine Gulch Creek and Pine Gulch Creek tributary to Bolinas Lagoon thence Pacific Ocean
POD:	POD 1 to offstream storage and POD/PORD 3A – South Pond, both within SE¼ of NW¼ of projected Section 24, T1N, R8W, MDB&M
Amount:	26 afa to storage
Season:	December 15 of each year to March 31 of the succeeding year
Purpose of Use:	Irrigation
Place of Use:	17.8 acres within SE¼ and SW¼ of NW¼ and 4.8 acres within SW¼ of NE¼, all within projected Section 24, T1N, R8W, MDB&M, for a total of 22.6 acres
Petition for Change	Riparian water diverted for irrigation pursuant to Statement 8209 is proposed to be dedicated to instream flow for the benefit of fish and wildlife resources from July 1 to December 15 of each year. Domestic riparian diversions would continue to occur year round.

Summary of Application 31751

Applicant	New Land Fund
Source:	Pine Gulch Creek tributary to Bolinas Lagoon thence Pacific Ocean
POD:	POD 3 to offstream storage within SE¼ of SE¼ of projected Section 14; PORD 2 – Hillside Pond within SW¼ of SW¼ of projected Section 13, both within T1N, R8W, MDB&M
Amount:	5.5 afa to storage
Season:	December 15 of each year to March 31 of the succeeding year
Purpose of Use:	Irrigation
Place of Use:	5.8 acres within SW¼ of SW¼ of projected Section 13 and 2.9 acres within NW¼ of NW¼ of projected Section 24, all within T1N, R8W, MDB&M, for a total of 8.7 acres.
Petition for Change	Riparian water diverted for irrigation pursuant to Statement 14981 is proposed to be dedicated to instream flow for the benefit of fish and wildlife resources from July 1 to December 15 of each year. Domestic riparian diversions would continue to occur year round.

Summary of Application 31752

Applicant	Fresh Run Farm
Source:	Unnamed Stream tributary to Pine Gulch Creek and Pine Gulch Creek tributary to Bolinas Lagoon thence Pacific Ocean
POD:	POD 4 to offstream storage within NE¼ of SE¼; POD 5 to offstream storage within SW¼ of NE¼; POD E – Green Pond and POD/PORD 1B – New Green Pond within NE¼ of NE¼; and PORD 1A within NW¼ of NE¼, all within projected Section 14, T1N, R8W, MDB&M
Amount:	23.5 afa to storage
Season:	PODs 4, 5, and 1B: December 15 of each year to March 31 of the succeeding year POD E- Green Pond: November 1 of each year to May 15 of the succeeding year.
Purpose of Use:	Irrigation, recreation, fire protection
Place of Use:	16.4 acres within the NE¼; 6.5 acres within NE¼ of SE¼; all within projected Section 14, R8W, MDB&M for a total of 22.9 acres
Petition for Change	Riparian water diverted for irrigation pursuant to Statements 14759, 14760, and 14764 is proposed to be dedicated to instream flow for the benefit of fish and wildlife resources from July 1 to December 15 of each year. Domestic riparian diversions would continue to occur year round.

Project information, procedures for protesting and protest forms are available at: www.waterrights.ca.gov. The contact person for this matter is Angela Nguyen-Tan at (916) 341-5318 or by e-mail at anguyentan@waterboards.ca.gov.

Protests must be received by the Division of Water Rights by **4:30 p.m. on May 4, 2009**

Date of Notice: March 24, 2009

ANT: DCC: 03/24/09

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PUBLIC NOTICE MAILING LIST FOR APPLICATIONS 31749, 31750, 31751, 31752

Permitting Section Chief: SRH
 Senior: PGC
 Staff: JDM/ANT

Date: MAR 24 2009

Days: 40

APPLICANT (certified)
**Pine Gulch Creek Watershed
 Enhancement Project**
Fitzgerald Abbot & Beardsley, LLP
c/o Barry H. Epstein
1221 Broadway, 21st Floor
Oakland, CA 94612

✓POSTMASTER
20 Brighton Avenue ✓
Bolinas, CA 94924

✓COUNTY: Marin
 1. District Attorney ✓
 2. Board of Supervisors ✓
 3. County Planning Department ✓

STANDARD LIST (ALL NOTICES):

1. Department of Fish and Game
c/o Nancee Murray, Senior Staff Counsel
(w/ copy of application)
2. Department of Fish and Game
c/o Carl Wilcox, Acting Water Branch Chief
(w/ copy of application)
3. J.G. Boswell Company ✓
4. Lennihan Law ✓
5. Modesto Irrigation District ✓
6. Riverside County ✓
Board of Supervisors
7. Thomas O. Thomas ✓
8. Trout Unlimited ✓
c/o Stan Griffin
9. U.S. Bureau of Reclamation ✓
c/o Ray Sahlberg

✓FEDERAL AGENCIES:

1. U.S. Bureau of Land Management ✓
District Manager, Ukiah Field Office
2. U.S. Department of Defense
Army Corps of Engineers
San Francisco District ✓
3. U.S. National Park Service ✓
c/o Chuck Pettee

STATE AGENCIES:

1. California Coastal Commission ✓
North Central Coast District Office
2. Department of Anthropology
Sonoma State University ✓
Regional Information Center

3. Department of Fish and Game
Region: **3, Bay Delta Region**
(w/ copy of application)
4. Regional Water Quality Control Board ✓
Region: **2, San Francisco Bay Region**

✓INTERESTED PARTIES:

1. Marin Conservation League ✓
1623A Fifth Ave
San Rafael, CA 94901

U:\PERDRV\NguyenTan\Pine Gulch
 Enhancement\Standard Mailing list county &
 streams.doc

Downstream user List to confluence of Pacific Ocean
Applications 31749, 31750, 31751, & 31752

S009348

##

TIMOTHY J TABERNIK
357A MOLINO AVE
MILL VALLEY, CA 94941

✓

S009463

##

DONALD W MURCH
140 OLEMA-BOLINAS RD
BOLINAS, CA 94924

✓

S009447

##

M BERNSOHN
DBA LAS BAULINES NURSERY
BOLINAS/OLEMA RD
BOLINAS, CA 94924

✓

S014759

##

JOHN J MARTINELLI
615 HORSESHOE HILL RD
BOLINAS, CA 94924

✓

S014760

##

JOHN J MARTINELLI
615 HORSESHOE HILL RD
BOLINAS, CA 94924

S014764

##

JOHN J MARTINELLI
615 HORSESHOE HILL RD
BOLINAS, CA 94924

2009 MAR 12 AM 11:58
FRESH RUN FARM
FRESH RUN FARM

PETITION FOR CHANGE
(WATER CODE 1700)

Fresh Run Farm
Compiled 10.04.2008

____ Point of Diversion, ____ Point of Rediversion, ____ Place of Use, X Purpose of Use
Application ____ Permit ____ License ____ Statement or Other ____

I (we) hereby petition for change(s) noted above and shown on the accompanying map and described as follows:

Point of Diversion or Rediversion (Give coordinated distances from section corner or other ties as allowed by Cal CR715, and the 40-acre subdivision in which the present & proposed points lie.)

Present:

POD #	CALIFORNIA COORDINATES (NAD 27)	ZONE	POINT IS WITHIN 40-acre subdiv	SECTION	TOWNSHIP	RANGE	BASE AND MERIDIAN
4	527530N 1364110E	3	NE 1/4 SE 1/4	14 (P)	1N	8W	MDM
5	528790N 1363490E	3	SW 1/4 NE 1/4	14 (P)	1N	8W	MDM

Proposed: Instream, Pine Gulch Creek, Marin County

Place of Use (If irrigated then state number of acres to be irrigated within each 40-acre tract.)

Present:

USE IS WITHIN (40-acre subdivision)	SECTION*	TOWNSHIP	RANGE	BASE & MERIDIAN	IF IRRIGATED	
					Acres	Cultivated ? (Y/N)
NE 1/4 of NE 1/4	14 (P)	1N	8W	MDM	0.3	N
NW 1/4 of NE 1/4	14 (P)	1N	8W	MDM	2.4	Y
SW 1/4 of NE 1/4	14 (P)	1N	8W	MDM	1.1	Y
SE 1/4 of NE 1/4	14 (P)	1N	8W	MDM	12.6	Y
NE 1/4 of SE 1/4	14 (P)	1N	8W	MDM	6.5	Y
Total:					22.9	

* Please indicate if section is projected with a "(P)" following the section number

Proposed: Instream, Pine Gulch Creek, Marin County

Purpose of Use

Present: Irrigation

Proposed: Enhancement of instream fish habitat.

Does the proposed use serve to preserve or enhance wetlands habitat, fish and wildlife resources, or recreation in or on the water? (See WC 1707)? (yes/no) Yes.

- GIVE REASON FOR PROPOSED CHANGE: This Petition under Water Code Section 1707 accompanies an Application to Appropriate Water by the same Petitioner/Applicant and is part of the Pine Gulch Creek Enhancement Project. Pursuant to this project, the Petitioner/Applicant and the farmers of two adjacent properties are undertaking a project to substitute winter appropriative rights to storage for summer irrigation use in lieu of diversions for irrigation use under existing riparian rights. Under this Petition, riparian diversions for irrigation would cease from July 1 to December 15 of each year. (Domestic riparian diversions would continue on a year round basis.) See accompanying Application to Appropriate Water and documents referenced therein for further Project description.
- WILL THE OLD POINT OF DIVERSION OR PLACE OF USE BE ABANDONED? (yes/no) No.
- WATER WILL BE USED FOR enhancement of instream fish habitat PURPOSES.

DFG Rec'd
750.00
2/12/09
Rec'd
(Combined Check)
\$6,088.50
3/12/09
MS

I(we) have access to the proposed point of diversion or control the proposed place of use by virtue of ownership.

Are there any persons taking water from the stream between the old point of return flow and the new point of return flow? (yes/no) n/a

If by lease or agreement, state the name and address of the party/parties from whom access has been obtained: n/a

Give name and address of any person(s) taking water from the stream between the present point of diversion or rediversion and the proposed point of diversion or rediversion, as well as any other person(s) known to you who may be affected by the proposed change. n/a

THIS CHANGE DOES NOT INVOLVE AN INCREASE IN THE AMOUNT OF THE APPROPRIATION OR SEASON OF USE.
I(we) declare under penalty of perjury that the above is true and correct to the best of my(our) knowledge and belief.

Dated MARCH 7, 200⁹ at Bolinas California



Peter Martinelli

(415) 868-2313
Telephone

NOTE: A \$1,000 fee, for each Application listed, made payable to the State Water Resources Control Board and an \$850 fee made payable to the Department of Fish and Game must accompany a Petition for Change.

California Environmental Protection Agency

State Water Resources Control Board

DIVISION OF WATER RIGHTS

P.O. Box 2000, Sacramento CA 95812-2000

Info: (916) 341-5300, Fax (916) 341-5400, Web: <http://www.waterrights.ca.gov>

ENVIRONMENTAL INFORMATION
FOR PETITIONS

Fresh Run Farm

Compiled 10.04.2008

☒ Petition for Change

☐ Petition for Extension of Time

Before the State Water Resources Control Board (SWRCB) can approve a petition to change your water right permit or a petition for extension of time to complete use, the SWRCB must consider the information contained in an environmental document prepared in compliance with the California Environmental Quality Act (CEQA). This form is not a CEQA document. If a CEQA document has not yet been prepared, a determination must be made of who is responsible for its preparation. As the petitioner, you are responsible for all costs associated with the environmental evaluation and preparation of the required CEQA documents. Please answer the following questions to the best of your ability and submit any studies that have been conducted regarding the environmental evaluation of your project.

1. DESCRIPTION OF PROPOSED CHANGES OR WORK REMAINING TO BE COMPLETED

For a petition to change, provide a description of the proposed changes to your project, including, but not limited to, type of construction activity, structures existing or to be built, area to be graded or excavated, increase in water diversion and use (up to the amount authorized by the permit), changes in land use, and project operational changes, including changes in how the water will be used. For a petition for extension of time, provide a description of what work has been completed and what remains to be done. Include in your description any of the above elements that will occur during the requested extension period.

This Petition under Water Code Section 1707 accompanies an Application to Appropriate Water by the same Petitioner/Applicant and is part of the Pine Gulch Creek Enhancement Project. Pursuant to this project, the Petitioner/Applicant and the farmers of two adjacent properties are undertaking a project to substitute winter appropriate rights to storage for summer irrigation use in lieu of diversions for irrigation use under existing riparian rights. Under this Petition, riparian diversions for irrigation would cease from July 1 to December 15 of each year. (Domestic riparian diversions would continue on a year round basis.) See accompanying Application to Appropriate Water and documents referenced therein for further Project description.

For a detailed project description, please refer to the enclosed Mitigated Negative Declaration and accompanying Initial Study, Pine Gulch Creek Enhancement Project, adopted by Marin County November 15, 2007. See also Pine Gulch Creek Watershed, Water Availability Analysis and Cumulative Instream Impact Analysis (WAA/CFII) report by B. Ketcham, National Park Service, Nov. 3, 2005.

2. COUNTY PERMITS

a. Contact your County planning or public works department and provide the following information:

Person contacted: Jeremy Tejirian, Planner Date of contact: 2003 - present

Department: Marin County Community Development Agency - Planning Telephone: 415.499-3798

County Zoning Designation: C-APZ-60

Are any county permits required for your project? ☒ YES ☐ NO. If YES, check appropriate box below:

☐ Grading permit ☐ Use permit ☐ Watercourse

☐ Change of zoning ☐ General plan change ☐ Obstruction permit

☒ Other: Coastal Permit (CP03-4); Design Review Clearance (DC03-24)

b. Have you obtained any of the required permits described above? ☒ YES ☐ NO

If YES, provide a complete copy of each permit obtained.

3. STATE/FEDERAL PERMITS AND REQUIREMENTS

a. Check any additional state or federal permits required for your project:

☐ Federal Energy Reg Com ☐ U.S. Forest Service ☐ U.S. Bureau of Land Management
☒ U.S. Army Corps of Engrs ☐ U.S. Natural Resource Cons Svc ☒ Calif. Dept of Fish and Game
☐ State Lands Commission ☐ Calif. Dept. of Water Resources (Div. of Safety of Dams)
☐ Calif. Coastal Commission ☐ State Reclamation Board ☒ Other: US Fish/Wildlife
☒ Calif Reg. Water Quality Control Board – SF Bay Region

b. For each agency from which a permit is required, provide the following information:

AGENCY	PERMIT TYPE	PERSON(S) CONTACTED	CONTACT DATE	TELEPHONE NO.
US Fish & Wildlife	Safe Harbor Agr.	Rick Kuyper	Ongoing	(916) 414-6562
CDFG	Stream Alt Agr.	Region III	Ongoing	(707) 944-5562
US Army Corps	Sec 404	Mike D'Avignon	March 22, 2006	(415) 503-6773
CRWQCB-SFBR	Sec 401			

c. Does your proposed project involve any construction or grading-related activity that has significantly altered or would significantly alter the bed, bank, or riparian habitat of any stream or lake? ☐ YES ☒ NO
 If YES, explain: _____

d. Have you contacted the California Department of Fish and Game concerning your project? ☒ YES ☐ NO
 If YES, name and telephone number of contact: Jeremy Sarrow, Environmental Scientist (707) 944-5573

4. ENVIRONMENTAL DOCUMENTSa. Has any California public agency prepared an environmental document for your project? ☒ YES ☐ NOb. If YES, submit a copy of the latest environmental document(s) prepared, including a copy of the notice of determination adopted by the California public agency. Public agency: County of Marin

- Mitigated Negative Declaration and accompanying Initial Study Pine Gulch Creek Enhancement Project (Martinelli, Weber, New Land Fund Coastal Permit 03-4 & Design Review Clearance 03-24) Adopted by Marin County November 15, 2007
- Biological Assessment, Pine Gulch Creek Watershed Enhancement Project Huffman-Broadway Group, Inc. April 2007.
- Pine Gulch Watershed Water Availability and Instream Flow Analysis B. Ketcham, Hydrologist. Pt. Reyes National Seashore, Point Reyes Station CA 94956. Oct. 2003
- A Cultural Resources Evaluation of the Pine Gulch Creek Watershed Enhancement Project, Agricultural Irrigation Storage, Bolinas, Marin County Archaeological Resource Service. 2001.
- A Cultural Resources Evaluation of Three Additional Pond Sites, Pine Gulch Creek Watershed Enhancement Project, Agricultural Irrigation Storage, Bolinas, Marin County Archaeological Resource Service. 2003.

c. If NO, check the appropriate box and explain below, if necessary:

- ☐ The petitioner is a California public agency and will be preparing the environmental document.*
☐ I expect that the SWRCB will be preparing the environmental document.**
☐ I expect that a California public agency other than the State Water Resources Control Board will be preparing the environmental document.* Public agency: County of Marin

* **Note:** When completed, submit a copy of the final environmental document (including notice of determination) or notice of exemption to the SWRCB, Division of Water Rights. Processing of your petition cannot proceed until these documents are submitted.

** **Note:** CEQA requires that the SWRCB, as Lead Agency, prepare the environmental document. The information contained in the environmental document must be developed by the petitioner and at the petitioner's expense under the direction of the SWRCB, Division of Water Rights.

5. WASTE/WASTEWATER

- a. Will your project, during construction or operation, (1) generate waste or wastewater containing such things as sewage, industrial chemicals, metals, or agricultural chemicals, or (2) cause erosion, turbidity or sedimentation? YES X NO

If YES, or you are unsure of your answer, explain below and contact your local Regional Water Quality Control Board for the following information (See instruction booklet for address and telephone no.):

- b. Will a waste discharge permit be required for your project? YES X NO

Person contacted: _____ Date of contact: _____

- c. What method of treatment and disposal will be used? _____

6. ARCHEOLOGY

- a. Have any archeological reports been prepared on this project? X YES NO

- b. Will you be preparing an archeological report to satisfy another public agency? X YES NO

- c. Do you know of any archeological or historic sites located within the general project area? YES X NO

If YES, explain: Literature review and field investigation summarized in the 2001 and 2003 reports A Cultural Resources Evaluation of the Pine Gulch Creek Watershed Enhancement Project, Agricultural Irrigation Storage, Bolinas, Marin County and A Cultural Resources Evaluation of Three Additional Pond Sites, Pine Gulch Creek Watershed Enhancement Project, Agricultural Irrigation Storage, Bolinas, Marin County were used to identify known or suspected archaeological or historic sites in the general project area, which were then completely avoided in project scoping and development.

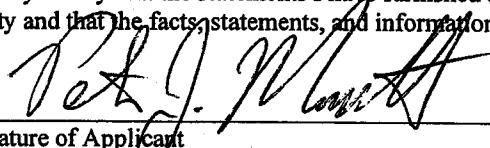
7. ENVIRONMENTAL SETTING

Attach **three complete sets of color photographs**, clearly dated and labeled, showing the vegetation that exists at the following three locations. For time extension petitions, the photographs should document only those areas of the project that will be impacted during the requested extension period.

- ____ Along the stream channel immediately downstream from the proposed point(s) of diversion.
____ Along the stream channel immediately upstream from the proposed point(s) of diversion.
____ At the place(s) where the water is to be used.

8. CERTIFICATION

I hereby certify that the statements I have furnished above and in the attachments are complete to the best of my ability and that the facts, statements, and information presented are true and correct to the best of my knowledge.



Signature of Applicant
Peter Martinelli

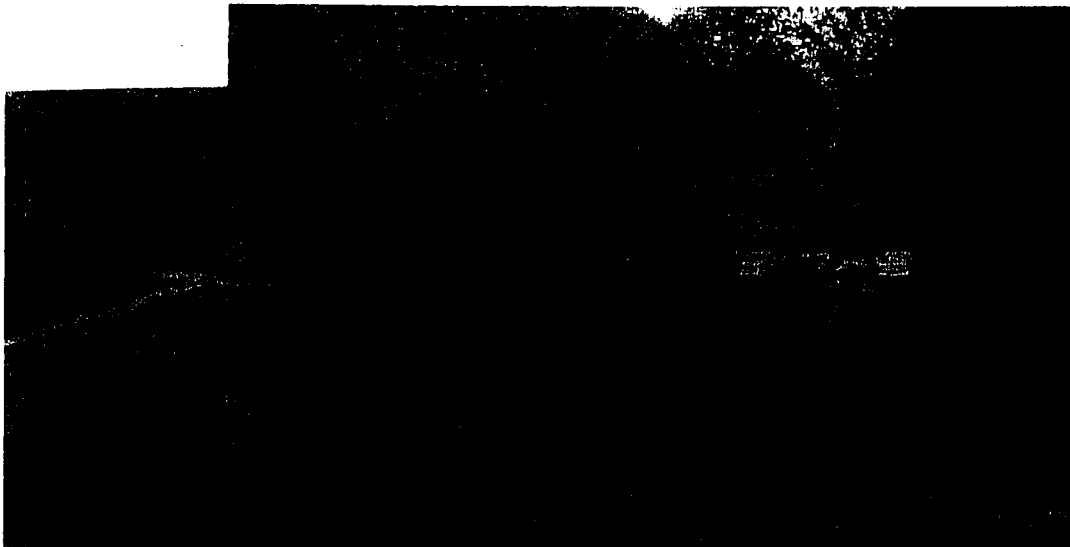
3-7-09

Date

Immediately upstream from the proposed point of diversion.



POU overview with active fields below Pine Gulch Creek flowing from top center to center and then left. POU 4 in canopy at left edge of left field. POU 5 at mouth of canyon in upper center. Existing Green Pond in center right. Pond 1B site in grassed meadow above Green Pond. Pond 1A site near white structure in upper right hilltop meadow.



Road in center traverses Green Pond levee. Pond 1B located beyond cars. Partial POU at left.

Peter Martinelli
Fresh Run Farm
615 Horseshoe Hill Road, Bolinas CA 94924
Oblique aerial photos taken January 8, 2003

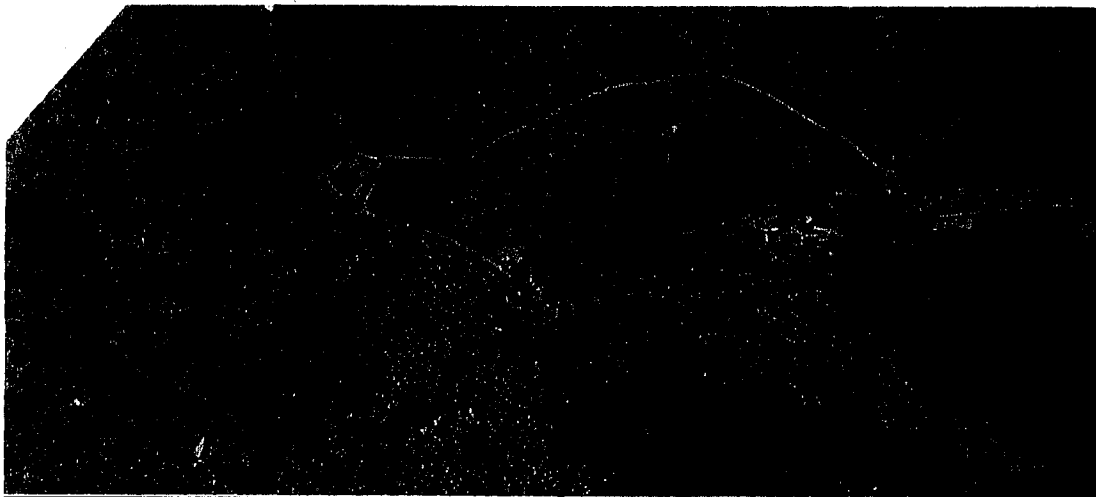
Environmental Setting Page 1.
Water Rights Application C6
Petition, Section 7
September 14, 2008

Immediately downstream from the proposed point of diversion.



Lower POU, with POD in lower right quadrant in trees at bottom of hill. Upper bench in distance contains level ground with annual grasses and coastal scrub suitable for farming that is presently not irrigated.

At the place(s) where the water is to be used.



Overview of POU towards East. Pond 1A in trees at lower left. Pond 1B above green pond. POU in fields in center and right of photo. No trees to be removed in open meadow settings.



Cal/EPA

State Water
Resources
Control Board

Division of
Water Rights

Mailing Address:
P.O. Box 2000
Sacramento, CA
95812-02000

901 P Street
Sacramento, CA
95814
(916) 657-1872
FAX (916) 657-1485

SURNAME



Pete Wilson
Governor

In Reply Refer
to:332:KSN:S14759

MAR 16 1998

Peter J. Martinelli
615 Horseshoe Hill Road
Bolinis, CA 94924

Dear Mr. Martinelli:

STATEMENTS OF WATER DIVERSION AND USE, STATEMENT NUMBERS
~~14759~~ 14760, AND 14764

Your statements of water diversion and use have been received and assigned the above numbers. You should refer to these numbers in any future correspondence to this office regarding the statements.

Copies of the statements are enclosed for your records.

Please notify us of any change in address or change in ownership.

The law requires that supplemental statements be filed at three-year intervals. The forms are automatically sent to you by the State Water Resources Control Board at the close of the period.

Thank you for your cooperation. If you have any questions or concerns, please telephone Koso Nodohara of this office at (916) 657-1872.

Sincerely,

KENNETH R BEYER
Associate WRC Engineer
Data Management Unit

Enclosures

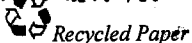
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KSN-3-12-98

SURNAME.pl (3/98)

DWR 510 REV. 1/86



Our mission is to preserve and enhance the quality of California's water resources, and ensure their proper allocation and efficient use for the benefit of present and future generations.

81 3910C

S014759

STATE OF CALIFORNIA
STATE WATER RESOURCES CONTROL BOARD
DIVISION OF WATER RIGHTS
STATEMENT OF WATER DIVERSION AND USE
(This is not a Water Right)

This statement should be typewritten or legibly written in

STATE WATER RESOURCES CONTROL BOARD
DIV. OF WATER RIGHTS
SACRAMENTO
97 FEB - 4 PM 1:44
868-2313

- A. Name of person diverting water Peter J. Martinelli
Address 615 Horseshoe Hill Rd., Bolinas, Calif. 94924
Telephone: (415) 868-2313
- B. Water is used under: X Riparian claim; Pre 1914 right; Other (explain)
- C. Name of body of water at point of diversion Pine Gulch Creek
Tributary to Bolinas Lagoon
- D. Place of diversion SE 1/4 NE 1/4 Section 14, Township 01N, Range 08W, MD B&M,
Marin County, and locate it on a print from a U.S.G.S. quad sheet or make a
sketch on the section grid on the reverse side with regard to section lines and
prominent local landmarks. Name of works Paradise Valley Ranch
- E. Do you own the land at the point of diversion? YES ☒ NO ☐
- F. Capacity of diversion works 25 (cfs or gpm) Capacity of storage reservoir (gallons or acre-feet)
Type of diversion facility: Gravity , Pump X
Method of measurement: Weir , Flume , Electric Meter , Water Meter , Estimate X
- G. State quantity of water used each month in gallons or acre-feet

Year	Jan.	Feb.	March	April	May	June	July	Aug.	Sept.	Oct.	Nov.	Dec.	Total Annual
'96				9,000 gal	9,000 gal	9,000 gal	9,000 gal	9,000 gal					45,000 gal

If monthly and annual use are not known, check months in which water was used. State extent of use in units, such as acres of each crop irrigated, average number of persons served, number of stock watered, etc.

- H. Annual water use in recent years: Maximum 45,000 gal Minimum (gallons or acre-feet)
- I. Purpose of use (what water is being used for) Crop Irrigation
- J. General description or location of place of use (use sketch of section grid on reverse if you desire)
- K. Year of first use as nearly as known 1950
- L. Name of person filing statement Peter J. Martinelli
Position: Owner/Operator
Address: P.O. Box 237 Bolinas, Calif. 94924

I declare under penalty of perjury that the above is true and correct to the best of my knowledge and belief.

Dated: Jan. 26, 19 97, at Bolinas, Calif., California

Signature: Peter J. Martinelli

